LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 30 1961
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 525

HERBERT E. SAIER, Petitioner

vs.

STATE BAR OF MICHIGAN, THE SUPREME COURT OF THE STATE OF MICHIGAN, ET AL., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HERBERT E. SAIER,
Petitioner, In Per Se.
Business Address:
% General Delivery,
Lansing, Michigan.

AMERICAN BRIEF AND RECORD COMPANY, FIFTY MARKET AVENUE, N.W.,
GRAND RAPIDS 2, MICHIGAN — PHONE GL 8-5326

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes and Constitutional Provisions Involved	6
Statement of the Case	9
Argument for Granting the Writ	14
Conclusion	26
Appendix A	27

CITATIONS

Cases:

City of Saginaw vs. Consumers Power Co., 213 Mich. 460 at 469 and 482	21
Dodge vs. Blood, 299 Mich. 364 at 367	21
Dolby vs. State Highway Commissioner, 283 Mich. 609	17
Gunn vs. Gunn, 205 Mich. 198	21
Hurtado vs. California, 110 U. S. 516 at 535	25
Kittridge vs. Circuit Judge, 80 Mich. 200	19
Manning vs. Ketchum, 58 Fed. 2nd 948	19
Marble vs. Butler, 249 Mich. 276	21
McHenry vs. Ford Motor Co., 269 Fed. 2nd, Page 18	21
McShane vs. Moldovan, 172 Fed. 2nd 1016	19
Nichols vs. Judge of Superior Court, 130 Mich. 187	18
Oliver, In re, 333 U. S. 257	16
Osborn vs. Bank of U. S., 9 Wheat (22 U. S.) 738, 866	17
People ex rel., Union Bag and Paper Co. vs. Gilbert, 256 N. Y. S. 442	20
Saier, In re., 342 Mich. 587	24
Shannon vs. Smith, 31 Mich. 450	19
State Bar of Michigan vs. Lansing, 361 Mich. 185 at 197	6, 22
Tumey vs. State, 273 U. S. 510	20, 22
Wright vs. Houdaille-Hershey Corp., 321 Mich. 21	21
Yazoo vs. Miss. Valley R. R. Co., 42 L. R. A. (N. S.) 1172	22

Page

Statutes and Other Authorities:

Amendment to the Constitution of the United States:
First Amendment, Section 1 6
Fourteenth Amendment, Section 1 6

Federal Civil Rights Statutes:
Title 28 USCA 1343 (3) 5, 7
Title 42 USCA 1983 ..... 5, 7
Title 42 USCA 1985 (3) 5, 7

Michigan Compiled Laws of 1948, Section 604.7 .....5, 8, 19

Michigan Constitution of 1908:
Article V, Section 21 18

State Bar Act, Michigan Public Act #58 of 1935 .....3, 4, 5, 8, 13, 14, 16, 18, 25
State Bar Act, Section 1 8

Supreme Court Rules Concerning the State Bar of Michigan:
Rule 3 ..... 5, 8
Rule 14, Section 1 8
Rule 14, Section 2 8
Rule 15, Section 4, (Old) 8
Rule 15, Section 4, (New) 9
Rule 15, Section 6 9
Rule 15, Section 8 9
Rule 15, Section 26 8

Supreme Court Canons of Professional Ethics:
Canon 29 9
Canon 32 9
Canon 41 9

Miscellaneous:

Michigan State Bar Journal, Volume Forty, Number six of June, 1961, with State Bar of Michigan Roster 13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. --------

HERBERT E. SAIER, Petitioner

vs.

STATE BAR OF MICHIGAN, THE SUPREME COURT OF THE STATE OF MICHIGAN, ET AL., Respondents

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Herbert E. Saier, petitioner, prays that a writ of certiorari issue to review judgment of the United States Court of Appeals for the Sixth Circuit, issued August 4, 1961, affirming the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is printed in the Appendix herewith (App. A, pp. 27-34) Civil Action No. 14462.

The opinion of the United States District Court for the Eastern District of Michigan, Southern Division is printed in the Appendix, nine copies attached of Court below (R. 87a-88a-89a). Civil Action No. 20473, of the Petitioner under Rule 23, Par. 1, (i).

The above cases have not been reported.

JURISDICTION

1. The judgment sought to be reviewed is dated and entered August 4, 1961, in the United States Court of Appeals for the Sixth Circuit (App. A, pp. 27-34).

2. There are no orders respecting a rehearing or granting an extension of time within which to petition for certiorari.

3. The jurisdiction of this Court is conferred by 28 *U. S. C.*, Sections 1254 (1) and 2101 (c).

QUESTIONS PRESENTED FOR REVIEW

1. Were the District Court and Court of Appeals in error in finding that this Petitioner's civil complaint failed to allege a cause of action cognizable by the Federal Court?

2. Does the Rule of the Supreme Court Rules Concerning the State Bar of Michigan give this Petitioner a right to have a complaint against members of the State Bar of Michigan processed as provided in Sections 4, 6 and 8 of said Rule 15?

3. Did the State Bar of Michigan deprive this Petitioner of equal protection under the law and did said State Bar of Michigan exercise unjust discrimination against this Petitioner when it neglected and refused to process complaints (called Requests for Investigation in the Rule — Forms are printed by the State Bar of Michigan) filed by this Petitioner against members of said State Bar?

4. Did the Supreme Court of the State of Michigan deprive this Petitioner of equal protection under the law, of due process of law, of an impartial tribunal and did said Michigan Supreme Court unjustly discriminate against this Petitioner when it denied this Petitioner's two applications for a Writ of Mandamus to compel the State Bar to act in accordance with said Rule 15 of the Supreme Court Rules Concerning the State Bar of Michigan?

5. Did the Michigan Supreme Court have jurisdiction, power and legal authority to sit in judgment and rule on the Petitioner's applications for Writ of Mandamus when the writ was requested against the State Bar of Michigan, of which all judges of said Michigan Supreme Court were

members with a financial interest therein, and when the rules sought to be applied were written by said Michigan Supreme Court under *Michigan Public Act* #58 of 1935?

6. Was District Judge Fred W. Kaess disqualified to sit on the trial of this case because of his being a compulsory member of the Defendant State Bar of Michigan with a financial interest therein?

7. Did the trial Court mis-state the issues involved in the case, pointing toward presumed ulterior purposes of the Plaintiff which were without justification in the record while brushing over and belittling the real issues and good-faith purposes of the Plaintiff?

8. Did the U. S. Court of Appeals for the Sixth Circuit deliberately mis-state the factual basis for its opinion or did it neglect to examine the documentary confirmation of facts which were not contradicted by any competent documentation by the Defendants-Appellees?

9. Did the U. S. Court of Appeals have any justification at law to ignore the numerous relevant authorities cited by the Appellant, many from said Sixth Circuit, in rendering its decision?

10. Did the U. S. Court of Appeals, Sixth Circuit, have any justification to resort to a presumption of good faith on the part of the Judges of the Michigan Supreme Court in the face of the deliberate false finding as to title to the State Bar property, in the face of the unquestionable refusal to require the State Bar to comply with the rules written by said Court Concerning said State Bar, in the face of the too frequent exercise of supervisory powers over said State Bar to the claimed extent sufficient to make the said judges Defacto officers and regular administration officers of said State Bar, in the face of such close co-operation and "sheltering" activities concerning said State Bar that apparent conspiracy with said State Bar was established?

11. Did the State Bar of Michigan have any legal justification for requesting or demanding of this Petitioner that he file another (No authority to demand revisions of complaint is given in the Rules) request for investigation after said State Bar had served the complaint of this petitioner upon the attorneys charged with misconduct; was not the service of the complaint upon the accused attorneys an act from which the State Bar could not retreat — was it not

the legal duty and obligation of the State Bar to follow through under the rules until the matter was duly disposed of by dismissal or other action?

12. Is the statute establishing an integrated b .r, *Michigan Public Act* #58 of 1935, unconstitutional and void for the reasons that it is a multiple purpose act and that it is against public polic, ?

13. Are the Supreme Court Rules Concerning the State Bar of Michigan unconstitutional and void because they provide in express terms that the Michigan Supreme Court, which acted in a legislative capacity in drafting the rules and which, under the supervisory powers established by common law and statutory law, acts in an administrative or executive capacity and, also, by the express terms of said rules, serves in a judicial capacity in sitting on appeals involving same and each and every member of said Court must be a member of the State Bar and, therefore, have a financial interest therein?

14. Is Rule 15 of the Supreme Court Rules Concerning the State Bar of Michigan unconstitutional and void because it expressly provides that the committee to which any complaint is referred must serve in the multiple capacities of investigator, magistrate, complainant and prosecutor?

15. Was there legal or factual justification for the Court of Appeals, Sixth Circuit, to falsely state in its opinion that this petitioner alleged in his complaint that he was requested to furnish new forms to the State Bar on October *3*, 1956, when the complaint expressly denies having received any — October *8th*, 1956, letter from the State Bar and shows the purported contents of the claimed letter to be absolutely false, because the complaint claimed therein to be returned to this Petitioner has never left the State Bar file and is still there today (Admitted by counsel for State Bar); and, on the basis of such a false premise, obviously unfounded in the record, was it not an unjustified conclusion of the Court of Appeals, that this Petitioner put "himself in default by his own allegation?" (It was admitted in open Court in both District Court and the Court of Appeals that Request for Investigation filed September 10th, 1956 was still in the Bar file by Counsel for the State Bar) — and did not this conclusion of default materially affect the decision of the Court?

16. Was not the arbitrary stopping of the processing of Petitioner's complaint, after copies had been served on the attorneys complained about by this Petitioner according to the rules, a denial of equal protection under the law in violation of 28 *U. S. C. A.* #1343 (3) and 42 *U. S. C. A.* #1983 and 1985 (3), and violated all of Petitioner's rights with bad faith, malice, prejudice, partiality, undue influence and other improper motives;

17. Was not the Michigan Supreme Court guilty of acting in both legislative and judicial capacities in violation of the Constitutional guarantee of due process of law and in violation of the principle of separation of powers when it sat on this Petitioner's application for a Writ of Mandamus involving the Supreme Court Rules Concerning the State Bar of Michigan, which were drafted by said Michigan Supreme Court for the said State Bar of Michigan, of which all members of said Michigan Supreme Court were dues paying members, with a financial interest therein, and said Michigan Supreme Court acted in a supervisory capacity over said State Bar (Executive) — thusly making their actions unconstitutional, without jurisdiction and, hence, without judicial immunity!

18. Did the Michigan Supreme Court have jurisdiction, power and legal authority to sit in judgment and rule on the Petitioner's Applications for Writ of Mandamus when writ was requested under "Section 604.7 *Michigan Compiled Laws* of 1948" when they were well aware of this law and their acting thereon constituted a denial of due process and violated all of Petitioner's rights with bad faith, malice, prejudice, partiality, and from other improper motives!

19. Is Rule 3, *Supreme Court Rules* Concerning the State Bar of Michigan unconstitutional in that all Federal Court Judges and Court of Appeals for 6th Circuit Justices in Michigan and the 2 Justices from Michigan of Court of Appeals, Sixth Circuit at Cincinnati, Ohio, after being selected as a qualified candidate and after being duly appointed to a Federal Judge's post with confirmation thereof a Federal Judge would be denied the right to serve in such honorable office unless he joined a certain union and paid dues thereto, as is required in Michigan under the Integrated Bar Act, *M. P. A.* #58 of 1935, and under the

Supreme Court Rules Concerning the State Bar of Michigan?

20. Did the District Court and Court of Appeals for the Sixth Circuit err in not ruling on the two opinions of the Attorneys General of Michigan on the unconstitutionality of the State Bar of Michigan owning the State Bar Building, at Lansing, Michigan and with certified copy of deed showing title in the State Bar of Michigan and not the State of Michigan?

21. Did the Court of Appeals for the Sixth Circuit err when it failed to rule on the falseness of Michigan Supreme Court and State Bar of Michigan claimed they were "Incorporated" when the letters of the Clerk of Ingham County, Michigan shows no incorporation papers filed in his office and the Michigan Corporation and Securities Commission show no record of a Corporation by name of The State Bar of Michigan in either our active or inactive files. Was this not perjury on the Part of the State Bar of Michigan and its officers?

22. Did not the Supreme Court commit fraud and file a false document and sign same in a conspiracy with the State Bar of Michigan in the *State Bar of Michigan vs. Lansing*, 361 Mich. 185, at 197, tax matter of State Bar Building at 310 Townsend Street, Lansing, Michigan?

23. Was Justice O'Sullivan of the 6th Circuit disqualified to sit on the trial of this case because of his being a compulsory member of the Defendant State Bar of Michigan with a financial interest therein?

24. Was Chief Justice Miller of the 6th Circuit disqualified to sit on the trial of this case because he admitted he had been sued for damages in a case such as this. His admittance was from the bench?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

First Amendment:

> "Section 1. Right to petition the Government for a redress of grievances."

Fourteenth Amendment:

> "Section 1. No state shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

FEDERAL CIVIL RIGHTS STATUTES

Title 28 *U. S. C. A.* 1343 (3):

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.

3. To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

Title 42 *U. S. C. A.* 1985 (3):

Conspiracy to interfere with civil rights — depriving persons of rights or privileges.

"* * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Title 42 *U. S. C. A.* 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution

or laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

MICHIGAN COMPILED LAWS OF 1948

Section 604.7 *Michigan Compiled Laws* of 1948 provides:

> "No judge of any court shall sit as such in any cause or proceeding in which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; * * *."

STATE BAR OF MICHIGAN RULES

Rule 3:

> "* * * Members who are judges of courts of record shall register as active members. * * *"

Rule 15, Section 26, Review by Supreme Court:

> "Any final order of the circuit court in any matter of misconduct or reinstatement shall be subject to review by the supreme court, in its discretion, upon both the law and facts. * * *"

References to the Rules and Sections of the State Bar of Michigan; *Michigan Public Act* #58 of 1935 and *Supreme Court Amended Rule 1*, State Bar of Michigan are hereby listed below with page numbers as printed in the Appendix of the Court below and certified to this Court and this Petitioner has filed nine copies of his Appendix below and also nine copies of the State Bar of Michigan Appendix in Court below:

	Page
Michigan Public Act No. 58 of 1935	R. 41a-42a
State Bar of Michigan Rules	
Rule 14, Section 1	R. 39a
Rule 14, Section 2	R. 40a
Rule 15, Section 4 (old)	R. 34a

Page

Rule 15, Modified Section 4 ..... R. 35a
Rule 15, Section 6 ..... R. 36a-37a
Rule 15, Section 8 ..... R. 36a
Supreme Court Amended Rule 1 ..... R. 42a-43a
Supreme Court Canons of Professional Ethics
Canon 29 ..... R. 14a
Canon 32 ..... R. 14a
Canon 41 ..... R. 14a

State of Michigan, Attorney General Opinions
Hon. Paul L. Adams, Attorney General ..... R. 70a
Hon. Thomas M. Kavanagh, Attorney General ..... R. 70a

STATEMENT OF MATERIAL FACTS

Herbert E. Saier, the Petitioner herein, is a citizen of Springfield, Missouri (R. 2a) and filed an action in the United States District Court for Eastern District of Michigan, Southern Division, in which he sought to recover damages from the State Bar of Michigan, and the Michigan Supreme Court, et al., (R. 2a-3a). His complaint specifically set out diversity of citizenship (R. 2a-59a-81a) which was never abandoned (App. A, pp. 28-29 of Opinion) — this point was argued in both the District Court and the Court of Appeals Sixth Circuit and in each instance opposing counsel acknowledged diversity of citizenship, and this Petitioner asks that all questions reviewable under a diversity of citizenship case be reviewed by this Court, and, also, claimed violations of the Federal Civil Rights Statutes (R. 81a-85a). His diversity of citizenship was argued and undeniably established on the hearing on motions to dismiss filed by defendants, and, also, there was argument on the civil rights phase of the case. However, there was no trial, because the District Court granted the motion to dismiss, holding that no cause of action had been stated in the complaint. This Petitioner pointed out to the District Court Judge that he was a dues paying member and having a financial interest in the outcome of this hearing, before the hearing was held (R. 75a) and should disqualify himself and call in an outside Judge (R. 75a).

This Petitioner then appealed to the Court of Appeals for the Sixth Circuit and the dismissal was affirmed, so he is now seeking a review by Writ of Certiorari.

On October 10, 1955, Petitioner filed with the State Bar of Michigan a complaint (Request for Investigation — Forms printed by the State Bar (R. 67a)) against certain attorneys. No action was taken, so Petitioner assembled additional information and, thereafter on July 16, 1956, a second complaint at the request of Executive Secretary and State Grievance Chairman Bachmann, was filed in more specific terms (R. 10a-71a-72a). The Petitioner was then advised by letter by Executive Assistant Joseph Cox that he should revise his complaint and make it more general (R. 20a-21a-64a) so, on July 28, 1956, the Petitioner filed a third complaint (R. 64a) set up in more general language. On July 30, 1956, Mr. Bachmann, Secretary for State Bar wrote this Petitioner advising of his serving the complaints upon the several attorneys (R. 19a) (Court of Appeals found that State Bar served said attorneys with said complaints (App. A, pp. 28-29)). All complainants are threatened with contempt by the Supreme Court as stated in Paragraph Three of the letter of Mr. Bachmann (R. 19a). Then nothing will be done on the Complaint, but Petitioner did not let it die, like his October 10, 1955 complaint. That about two weeks after July 30th, 1956 both Secretary Milton Bachmann and Joseph Cox, Executive Assistant, told this Petitioner orally, but in presence of a witness, that the accused attorneys wanted two more weeks to answer the complaint (R. 64a). No answer was made by the accused attorneys (R. 64a) but on August 28, 1956, this Petitioner received a letter from Secretary Bachmann requesting that the complaint be revised and made more specific (R. 64a). Thereafter, in compliance with said written request, this Petitioner filed a fourth complaint on September 10, 1956, which Executive Secretary Bachmann examined and praised as being biggest and the best organized complaint ever filed with him (R. 68a-71a-72a) every charge was followed by the proofs (R. 67a-68a-71a-72a). Bachmann signed for the September 10, 1956 complaint (R. 64a) at request of Petitioner.

No further action took place, so in about two weeks this Petitioner called at the State Bar Office in Lansing and

Secretary Bachmann bluntly advised this Petitioner that nothing was going to be done on his complaint — that he would take no action against Mr. Glassen because he was on the 6th Congressional Grievance Committee and worked very closely with the State Bar Office (R. 65a-66a-69a).

On October 8, 1956, this Petitioner took additional evidence of professional misconduct to Supreme Court Chief Justice John R. Dethmers and reported the refusal of the State Bar to proceed on his complaints (R. 65a). Justice Dethmers of the Michigan Supreme Court called Secretary Bachmann on the phone, in the presence of this Petitioner, and told him the charges were very serious and stated that the State Bar should take action (R. 65a).

No action was taken by the State Bar and this Petitioner did not go to the State Bar or see or talk to Mr. Bachmann until November 15, 1956, when Petitioner served Mr. Bachmann with the papers in Re his application to the Michigan Supreme Court for a Writ of Mandamus to compel the State Bar to process his complaints, as provided in the rules (R. 65a). The Supreme Court was furnished full information as to the misconduct (R. 10a-11a-12a-33a-67a-68a). Defendants do not deny charges are true (R. 25a-26a).

Mandamus was denied on January 16, 1957, but Justice Carr and Chief Justice Dethmers advised this Petitioner to go back to the State Bar and the matter would be taken care of (R. 66a). This Petitioner had many conversations with Secretary Bachmann and local counsel for State Bar, Russell Searl, but nothing was done but stall, stall (R. 66a) so on August 1, 1958, a second application was made to Defendant Michigan Supreme Court to issue a Writ of Mandamus to compel Defendant State Bar to process complaints of the Petitioner under Rule 15, Sections 4, 6 and 8 (R. 34a-35a-36a-37a) Rule 14, Sections 1-2 (R. 39a-40a). This second rehearing application for Mandamus contained 31 additional pages of reasons and grounds why mandamus should issue (R. 76a). Included in the additional papers filed in the State Supreme Court on the second application for mandamus was documented proof that one of the attorneys had falsified as to material facts on the first mandamus hearing (R. 15a-16a-67a), (See Para-

graphs 17-21-27 and 28 in Certified Record on Petition for Writ of Certiorari from Court of Appeals for the Sixth Circuit attached and part of this record). However, said State Supreme Court denied said second application for mandamus on December 2, 1958 (R. 11a). The State Bar of Michigan File was in the Clerk of the Michigan Supreme Court Office for comparison of Clerk of Supreme Court records and Petitioner's (See Clerk Hon. Donald F. Winters' letter in attached Certified Record on Petition for Writ of Certiorari) and (R. 84a).

The District Court ruled that Petitioner had no right to disbarment of an attorney (R. 88a-89a) but such an issue was not before said Court. This Petitioner does not claim in his complaint that he had such a right — his complaint set forth that he had a right to have his complaint processed in accordance with the procedural rules in the premises (R. 58a) but he claimed no right to any particular decision after investigation. He claimed the State Bar and Supreme Court did not carry out the canons of ethics (R. 14a).

The Court of Appeals for the Sixth Circuit ruled that this Petitioner would not have benefited by a disbarment action, which it could not have known without going into the questions of misconduct charged, and guilt or innocence of said attorneys was not at issue in said Court. The details of this Petitioner's documented proofs of perjury and false statements of Bachmann and Searl in Dean matter. (R. 30a-31a-38a-39a), of the disappearance of a Probate File, or an officer's report on an attempted murder, of Probate Orders showing misappropriation of funds, failure to account and false reports as to assets and as to income (R. 67a) are in the record only to show abuse of discretion, arbitrary denial of equal protection under the law, denial of due process of law, of conspiracy to deprive this Petitioner of rights guaranteed to him by the Constitution, etc., etc. (R. 58a) but the complaint contains nothing to indicate that this Petitioner seeks a review of the State Court rulings (R. 58a).

The Court of Appeals found that this Petitioner had defaulted when he failed to revise his complaint at the request of the State Bar (28-29, 32-33, 34), but apparently failed to consider the undisputed facts as to this Petitioner hav-

ing revised his complaint three times (R. 64a) at request of the State Bar (R. 64a) and that Secretary Milton E. Bachmann had bluntly told Petitioner that his complaint would never be acted upon because of relations of one of the accused attorneys with the State Bar (R. 64a) before this Petitioner applied for a writ of Mandamus (R. 69a).

The record shows that Defendant State Bar contends that it returned this Petitioner's complaint on October 8, 1956 (R. 28a-29a) which Petitioner denies (R. 29a) and the Petitioner alleged that he received no October 8th, 1956 letter (R. 29a) and that said purported letter is utterly false in that letters from the Clerk of the Supreme Court of Michigan show that said complaints were still in the file many months later, yes, years later (R. 84a-85a). It was on the false premise that this Petitioner's complaint was returned by the State Bar by Secretary Bachmann in October of 1956 with another request for revision that the Court of Appeals based its finding of default, even though the record showed undeniable documentation as to such false premise (R. 73a-84a-85a). (Three Clerk's Supreme Court letters were in both the District Court and were read). (General Counsel admitted September 10th, 1956 complaint was in Bar File in his office) also (R. 84a).

The law gives the Michigan Supreme Court supervisory powers over the lawyers and judges of the State (R. 79a-80a) expressly provides that said Supreme Court draft rules for the State Bar (*Michigan Public Act* #58 of 1935). The said Supreme Court then provided in its rules prepared for said State Bar that all questions raised under said rules could be appealed to said Supreme Court (Rule 15, Section 25) and said rules (Rule (3)), also, provided that all attorneys and judges in the State of Michigan be dues paying members of said State Bar or they would be subject to summary suspension. June, 1961 Issue of the Michigan State Bar Journal, Volume Forty — Number six — gives the 1961 State Bar of Michigan Roster of members of the State Bar of Michigan and, according to (Rule 3), all members of the Michigan Supreme Court and all members of the Federal District Courts in Michigan and the Justices of the Sixth Circuit, U. S. Court of Appeals, in Michigan and the Michigan members of the U. S.

Court of Appeals for the Sixth Circuit, in Cincinnati, Ohio are also listed.

In this Petitioner's civil complaint filed in the District Court, the questions of unconstitutional actions by Defendants State Bar and Michigan Supreme Court were clearly raised, the denial of rights guaranteed by the Constitution was pointed out, the unconstitutionality of the Integrated Bar Act, *Michigan Public Act* #58 of 1935, and, also, the unconstitutionality of the Rules Concerning the State Bar of Michigan was raised. These questions were argued before said District Court on the Defendants' motion to dismiss. These questions were again raised in the appeal to the Court of Appeals. These questions have been raised by this Petitioner at all stages of the proceedings, just as they are now raised in this application for a Writ of Certiorari. Petitioner has Diversity of Citizenship.

The pleadings are obvious, the questions on appeal are clear and no purpose would be served to quote in detail the numerous places where these questions were raised in each of the stages of these proceedings. (R. 2a-3a-4a-8a-9a-10a-33a-59a-70a-79a-80a-81a-84a-85a are a few).

ARGUMENT FOR GRANTING THE WRIT

Reasons why Certiorari should be granted.

In this matter every requisite for the issuance of a Writ of Certiorari is present:

Petitioner seeks review by certiorari of a final decision of the U. S. Court of Appeals, Sixth Circuit, under 28 U. S. C., Sections 1254 (1) and 2101 (c).

This case involves questions of both Constitutional and Statutory Law, some of which have never before been decided by this Court.

The issues raised herein are of grave importance to every practicing attorney, to every judge in all our courts, to every citizen in the country and to the general public so far as and wherever the public is involved in our jurisprudence.

The actions involved in this application for certiorari are official actions which are repugnant to our constitutional

concepts of equal application of the law, due process of law, impartial tribunal and freedom from unjust discrimination, of which civil rights this Petitioner claims to have been deprived.

In the first instance the State Bar failed, neglected and refused to process the complaint filed by this Petitioner even though the rules governing said State Bar expressly provide the method and manner of processing any and all complaints. Said State Bar officers, without any power or authority under said rules, delayed action by making contradictory and inconsistent demands for making said complaint "more general" and "more specific" before advising this Petitioner bluntly that it was not going to act thereon; said State Bar did at one time actually start processing said complaint then arbitrarily terminated same after being advised that the accused attorneys could not answer said charges made against them. In this regard the record shows that said State Bar falsely denied having started processing said complaint and, with the complaint obviously never leaving the State Bar file and with same being repeatedly examined by the State Supreme Court and numerous attorneys, said State Bar falsely contended that it returned said complaint to this Petitioner in October, 1956. Said State Bar refused to process said complaint even after it was specifically advised by Justices of the Supreme Court of Michigan to take action thereon. Yet, while it was so refusing to act, it was having its Secretary Bachmann and its attorney Searl repeatedly promise this Petitioner that its investigation service was available to him and any other citizen.

Then the State Supreme Court, which served in a supervisory capacity over the State Bar, which drafted said rules for the State Bar, and entitled them, "Supreme Court Rules Concerning the State Bar of Michigan" and was, therefore, very familiar with the detailed specifications for the processing of complaints filed with said State Bar, and with the fact that such complaints were provided as a means of petition for redress of grievances, refused this Petitioner's application for a Writ of Mandamus to compel the State Bar to follow its rules in processing of this Petitioner's complaint; the Defendant Supreme Court refused mandamus on two separate occasions — refusing to compel

the State Bar to follow the rules adopted concerning it, purporting to use its discretion contrary to law and for the purpose of permitting the State Bar to avoid the application of its governing rules. To uphold the District Court and Court of Appeals would, in legal effect, be ruling that the said rules are meaningless.

Individual Justices of the State Supreme Court kept in close contact with Executive Secretary Milton E. Bachmann of the State Bar and with Russell Searl, local counsel for said State Bar, taking full advantage of the supervisory power and authority granted by the statute to control this proceeding at all times.

This Petitioner contends that the close contact and complete co-operation displayed by and between the State Bar and the Supreme Court in this matter constitutes a conspiracy to deprive this petitioner of his constitutional rights in violation of the Federal Civil Rights Statute.

In the case of *In re Oliver*, 333 U. S. 257, the Michigan One-Man Grand Jury was held unconstitutional because it was built around a wrongful principle of having one man serve in several different capacities: Investigator, prosecutor, magistrate and Judge. In the case at Bar it is pointed out that *Michigan Public Act* #58 of 1935 established the Integrated Bar in Michigan, requiring all attorneys to belong to the State Bar Association, and said act, also, provides that the State Supreme Court adopt rules and regulations for said State Bar of Michigan; then, in the Supreme Court Rules Concerning the State Bar of Michigan, Rule 15, section 4, provides for the filing of complaints (Requests for Investigation), service of same on respondent attorneys, answer thereto; Section 6 provides for Grievance Committee action on complaints; Section 8 provides for hearings on said complaint; Rule 15, section 26 of said rules provides that any final order growing out of a disciplinary action shall be subject to review by the Supreme Court; and Rule 3 expressly provides that Judges register as active members. Thusly, by the express terms of the statute and the express terms of the rules authorized by the statute, the State Supreme Court serves in the capacities of supervisor (Executive in nature), the drafter of rules and regulations (Legislative in nature), and as reviewing tribunal (Judicial in nature) — all while being composed

of dues paying members of the State Bar, with financial interest therein. This arrangement is clearly much more repugnant to the Constitutional principles of separation of powers, due process of law, impartial tribunal, equal application of the law, and freedom from unjust discrimination than was the case in Oliver case, supra.

Even though mandamus is a discretionary writ, it is based on the basic principle that the Court will exercise a Judicial discretion. This Petitioner contends that the Michigan Supreme Court abused its discretion in its denial of mandamus because said Court's discretion was limited to the confines of the law applicable to the existing situation, and had there been an option as to which law applied, then the Court could exercise its discretion in determining which law to follow, and having determined the applicable law, the discretion ripened into a duty to apply that law and see that it was followed. Petitioner's application for mandamus was a simple demand that the State Bar be required to process his complaint according to the rules concerning the handling of complaints filed with the State Bar. The rules were clear and free from ambiguity; there was only one way to process the complaint, — the way that had been provided in the rules proposed by said State Supreme Court for said State Bar. There was no option, no choice but to follow the rules applicable to the situation. Hence, the Court had only to determine the rule or rules that applied, then it was duty bound to require the State Bar to follow such rule or rules.

In *Dolby vs. State Highway Commissioner*, 283 Mich. 609, the Michigan Supreme Court had held:

> "Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the legislative; or, in other words, to the will of the law. Osborn v. Bank of U. S., 9 Wheat. (22 U. S.) 738, 866."

All the arguments to show that the State Supreme Court acted unconstitutionally in serving in the several capacities mentioned apply equally to the State Bar Grievance Committee provisions in Sections 6 and 8 of Rule 15 of said State Bar Rules, which provide that said committee serve as investigators, magistrates, prosecutors, and complainants.

While discussing the multiple capacities in which the State Supreme Court and the State Bar Grievance Committee served, it would be well to point out that the Integrated Bar Act, *Public Act* #58 of 1935, is unconstitutional for violating Article V, Section 21, of *Michigan Constitution* of 1908, in that it embraces more than one purpose:

Michigan Constitution of 1908, Article V, Section 21, provides in the first sentence:

> "No one law shall embrace more than one object which shall be expressed in its title."

Said *Michigan Public Act* #58 of 1935 embraces the establishment of the State Bar of Michigan, the creation of a closed-shop union of lawyers and judges, the provision for the Supreme Court to organize and prepare rules and regulations concerning same, the provision for the membership dues and provision for establishment of standards of professional conduct. This act arbitrarily establishes a closed-shop bar, a private association with authority to collect dues and perform functions that fall within the scope of the controls which the State alone should perform, thusly attempting to delegate State powers to a private organization, which is repugnant to the constitutional principles which go to make this a government of law and not of men, and is contrary to the ruling in *Nichols vs. Judge of Superior Court*, 130 Mich. 187, as to delegation of powers and duties entrusted by the people. Held "a trust, a duty imposed by the people cannot be surrendered."

The question of judicial immunity has been raised in an attempt to relieve the Michigan Supreme Court from responsibility for its actions. The doctrine of judicial immunity is an old one and is founded on some very sound

principles. However, there was never a time when a judge was held to have judicial immunity when he acted without jurisdiction.

In *Manning vs. Ketchum*, 58 Fed. 2nd 948, where a judge exceeded his authority and jurisdiction in a special inquiry, the Federal Court allowed the claimant to recover against the judge for violating the Civil Rights Act, holding that the judge acted without jurisdiction, hence his acts were not judicial. This is a U. S. Court of Appeals, 6th Circuit ruling.

In *McShane vs. Moldovan*, 172 F. 2nd 1016, is another case in which the U. S. Court of Appeals for the Sixth Circuit ruled that the judge was acting without jurisdiction and had no immunity.

The Supreme Court of Michigan was well aware of the following Michigan statute:

> "Section 604.7 Michigan Compiled Laws of 1948 provides:
>
> > "'No judge of any court shall sit as such in any cause or proceeding in which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; • • •.'"

In this matter, this Petitioner contends that the facts and the law deprive the State Supreme Court of any and all jurisdiction in the premises. The judges were serving in too many capacities, so disqualified themselves in all capacities:

Kittridge vs. Circuit Judge, 80 Mich. 200.

In *Shannon vs. Smith*, 31 Mich. 450, the Court ruled:

> "There is no room • • • for the action of the judge whose relations have rendered it improper for him to try the cause. He is not expected or allowed to exercise his discretion in any part of the proceeding."

The disqualification of a judge is a jurisdictional question, so said judges acted without jurisdiction and their

acting thereon constituted a denial of due process (*Tumey vs. State*, 273 U. S. 510 and also *People ex rel. Union Bag and Paper Co. vs. Gilbert*, 256 N. Y. S. 442)

Under Rule 15, Section 4 of the Supreme Court Rules Concerning the State Bar of Michigan, "All requests for investigation" shall be in writing, filed in triplicate, a copy mailed to respondent — who shall make a full and fair disclosure in writing within 15 days. Then Section 6 of Rule 15 sets out specific steps to be taken by the grievance committee as to investigation of complaints and reports thereon, Section 8 of the same Rule 15 then provides that, "if the grievance committee finds there is reasonable cause to believe that the respondent is guilty of misconduct" it shall have a formal complaint prepared and filed, and notice same for hearing.

This Petitioner complied with the requirements of the rules in preparing and filing his request for investigation, he contends that he complied fully in each of his several requests so filed, but the State Bar failed, neglected and refused to follow through in accordance with the said rules.

If the said rules pertaining to the steps required to process a complaint, or a request for investigation, are to have any meaning whatever, they must refer to complaints filed by Citizens like this Petitioner. Said rules provide the only means for redress for grievances by the public against members of the bar and the denial of this right violates the First Amendment to the Constitution. Unless such rules are construed as vesting a right in any citizen to have his complaint processed, then such rules must be held to be a sham, a ruse, a fraud on the public. By inference the Court of Appeals stated that this Petitioner was given a right by said rules; said Court of Appeals held that this Petitioner lost his rights by failing to fill out new forms when requested by the State Bar — the fact that new forms were repeatedly filled out and filed by this Petitioner shows there was no default on his part so, therefor, his rights would have been retained. Rights must have existed or the Court could not have been trying to justify the loss of same. The right is to have the complaint processed and denial of this right is denial of equal protection under the law, denial

of due process of law and is unjust discrimination in violation of the Constitution. And if said rules do give this petitioner a right to have his complaint processed, then the denial of this right by the State Bar and the State Supreme Court would be a deprivation of equal protection under the law, would be a denial of due process of law and would be an act of unjust discrimination against this Petitioner in violation of the Federal Civil Rights Statutes. Such deprivation was clearly set out in this Petitioner's complaint filed in the District Court and also emphatically stressed before the United States Court of Appeals, so it must be found that both the Trial Court and said Court of Appeals erred in their dismissal and affirmation of dismissal, respectively, because on a motion to dismiss the complaint alone is before the Court.

> *City of Saginaw vs. Consumers Power Co.*, 213 Mich. 460, at 469 and 482;
> *Gunn vs. Gunn*, 205 Mich. 198.

And all well pleaded facts must be considered as true for the purpose of said motion:

> *Dodge vs. Blood*, 299 Mich. 364 at 367;
> *Wright vs. Houdaille-Hershey Corp.*, 321 Mich. 21;
> *Marble vs. Butler*, 249 Mich. 276.

And in *McHenry vs. Ford Motor Co.*, 269 Fed. 2nd 18, the Court ruled:

> "Moreover, the Court is required to take the view most favorable to the party opposing the motion, giving that party the benefit of all favorable inference that may be drawn from the evidence." (Motion was for summary judgment).

It is considered worthy of thought on the question of Certiorari that the Trial Judge was a Michigan judge and, therefore, a compulsory member of the State Bar, paying due sand having a financial interest therein — all of which was pointed out to said judge before he dismissed this Petitioner's complaint. Such an interest should have been sufficient for said Trial Judge to disqualify himself, because under such circumstances he cannot be sincerely

and honestly considered impartial, free from bias, and his decision cannot be otherwise than slightly tarnished — also applies to Justice O'Sullivan of Court of Appeals. *Yazoo vs. Miss. Valley R. R. Co.*, 42 *L. R. A.* (N. S.) 1172; *Tumey vs. State*, 273 U. S. 510, supra.

The mis-statement of the issues involved and pointing toward presumed ulterior motives of this Petitioner without justification therefor in the record and the brushing aside and belittling the real issues and good faith purposes of the Petitioner all tend to confirm the presence of bias in the mind of the trial judge in the District Court.

As a further basis for the granting of certiorari, this Petitioner calls attention to the fact that the United States Court of Appeals was just as bound to consider the allegations in this Petitioner's complaint true as was the District Court, and yet said Court of Appeals mis-stated some material facts which were well and clearly documented and in no way contradicted; and, also, said Court of Appeals elected not to recognize numerous relevant authorities cited by this Petitioner — many from the said Sixth Circuit. Said Court of Appeals resorted to a presumption of good faith on the part of the judges on the Michigan Supreme Court in the face of undisputed showing by this Petitioner that said State Supreme Court deliberately and knowingly made a false finding as to title to the State Bar property, *State Bar of Michigan vs. City of Lansing*, 361 Mich. 185, at 197; in face of the recorded deed in the name of the State Bar of Michigan, as appears in the Records of the Register of Deeds for Ingham County, Michigan, with the State of Michigan holding no interest; in the face of letters from the Clerk of said Supreme Court establishing the fact of the falsity of the claim of the State Bar that this Petitioner's complaints had been returned (Bachmann filed affidavit he had returned complaints in Mandamus hearing) to him on October 8, 1956 — such letters showing said complaints still in Bar File; (Attorney for State Bar admitted same in open Court); in face of the audit of the State Bar of Michigan showing the State Bar to be an independent Association, owning its own property and handling its own finances or with 9,000 members paying dues of $35.00 yearly (over $300,000.00 annually in dues alone) separate and independ-

ent of the State of Michigan; in spite of the statement of Officer Spitzley that one of the accused attorneys attempted to murder this Petitioner by stabbing him in the back with a screw-driver; in the face of the signed statement of Robert Arvidson, a reputable attorney, and testified to same in court as true showing one of the accused attorneys responsible for the disappearance of an entire Probate File; in face of the affidavit of George Dean, another reputable attorney, establishing that one of the accused attorneys had falsified as to material and relevant facts in order to obtain a favorable action out of said State Supreme Court — and Circuit Court — all of which facts were before said State Supreme Court, before the District Court and before the Court of Appeals, 6th Circuit in the Bill of Complaint of District Court and Court of Appeals, and were argued in both lower courts (all of these above documents were filed with the Court of Appeals as pertinent matters inadvertently omitted from appendix under rule 16, (4) (g) or (6)). All of these documents are in the Certified record to this Court from the Clerk of Court of Appeals, 6th Circuit. These documents not only show the falseness of the defendants and accused attorneys complained about, but also, the distortion of both the District Court and Court of Appeals. And in the face of an obvious refusal to compel the State Bar to comply with the Supreme Court Rules Concerning the State Bar of Michigan and in the face of the undisputed showing of too frequent exercise of supervisory powers over the State Bar so frequent that this Petitioner claimed it established said Court as Defacto officers of said State Bar and working so closely with said State Bar that an apparent conspiracy was established. None of the Defendants deny that the Charges are true, as all are backed by facts, facts and facts.

It is important, also, to consider that the U. S. Court of Appeals found that the State Bar did mail copies of the request for investigation upon the respondent attorneys at one time in July, 1956. However, this was as far as the process was permitted to go. In fact, said State Bar arbitrarily backed up and sought to start over again. This would rule out the theory set out by the U. S. Court of Appeals that Petitioner defaulted by not redrafting his complaint the fourth time.

The form and content of said request for investigation was certainly approved before it was mailed to the respondents, therefore, there was no justification for said State Bar to request still another complaint.

There is considerable doubt as to the power and authority of the officers of the State Bar to require re-drafts when the written complaint meets all specific requirements of the rules. No rule gives such authority to said State Bar or any of its officers. Petitioner served complete file of Request for Investigation (4) sets on the printed forms of the State Bar of Michigan and proper number for each accused attorney and plus two big files of records, affidavits, court testimony, police statements, court records, U. S. Income tax returns, which was about two inches thick, of over 100 pages and over 50 photostats. That in photostats required by the then State Chairman Grievance Committee and Executive Secretary — six sets of Photostats were served upon Mr. Bachmann, a copy of total sets of all photostats for each accused attorney and an office copy for the State Bar of Michigan, therefore supplying all the records and more than the State chairman of the Grievance Committee required. Petitioner filed all forms besides as required. The statement that the records, signed statements, the affidavits, testimony, photostats and etc. should be redrafted is ridiculous and the big files are not words, words, words as stated by the District Court, but, facts, facts, facts. He multiplieth facts without ending. At no time have defendants ever stated the charges are untrue, as each charge is backed by records and not words, words, words.

This Petitioner refers to the State Bar of Michigan appendix, which, petitioner has filed nine copies with his own copies of nine and refers to Par. 15 is correct and Par. 86 of their appendix is answered by the fact that Petitioner was subpoenaed, but the accused attorneys objected to his testimony as being "as equally within the knowledge of the deceased," and court denied admission of same. Vol. 342 Mich. 587 at page 593.

This Petitioner contends that it is repugnant to our principles of government set up in our Constitution and somewhat shocking to the sense of dignity associated with our Federal Courts that, after being selected as a qualified

candidate and after being duly appointed to a Federal Judge's post, with confirmation thereof, a Federal Judge would be denied the right to serve in such honorable office unless he joined a certain union and paid dues thereto. Such is the situation in Michigan under the Integrated Bar Act, *M. P. A.* #58 of 1935, and under the Supreme Court Rules Concerning the State Bar of Michigan.

If this Court does not grant certiorari to this petitioner, it will mean that he will be deprived of his day in court. The District Court dismissed without hearing any proofs and the U. S. Court of Appeals affirmed said dismissal. Petitioner's contention as to the errors of these are stated above and will not be repeated. However, it does seem that this Petitioner should be heard by some Court.

In *Hurtado vs. California*, 110 U. S. 516 at 535, the United States Supreme Court said:

> "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law — a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."

Petitioner was not aware at the hearing in Court of Appeals, that Justice Clifford O'Sullivan was a compulsory member of the State Bar of Michigan from Port Huron, Michigan and should not have sat, being a dues paying member and financially interested. Said Justice is listed under the June, 1961 Roster of Members from Port Huron, Michigan. Justice Thomas F. McAllister of Court of Appeals 6th Circuit is listed under Grand Rapids, Michigan and Judge Fred W. Kaess of District Court is listed under Detroit, Michigan. Therefore this Petitioner did not receive an impartial tribunal or hearing in either Court and all his Constitutional Rights and Civil Rights were violated.

Chief Justice Miller admitted from the bench in open Court he had been sued for damages on a case such as the Petitioners and therefore should not have sat in this hear-

ing, as he was not free from bias, prejudice or partiality and from other improper motives.

Circuit Court Judge James E. O'Neill ruled from the bench that the State Bar of Michigan was "our union" and a phostatic copy is in Certified Record from the Court of Appeals and was argued in both District Court and Court of Appeals.

The Michigan Supreme Court and the State Bar of Michigan have violated all of the Petitioner's rights with bad faith, malice, prejudice, partiality, undue influence and from other improper motives.

Certiorari should be granted in this case because the Petitioner has been denied his day in court, because the Petitioner has been deprived of equal protection under the law, because the Petitioner has been the victim of unjust discrimination, because the Petitioner has, under color of law, been deprived of rights and privileges guaranteed to him by the Constitution, even though some of the state laws and regulations under color of which such deprivation was accomplished were themselves unconstitutional.

CONCLUSION

Therefore, petitioner respectfully requests that a Writ of Certiorari issue to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

HERBERT E. SAIER.
Petitioner, In Per Se.
Business Address:
℅ General Delivery,
Lansing, Michigan.

APPENDIX A

(Filed August 4, 1961, Carl W. Reuss, Clerk)

No. 14462

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HERBERT E. SAIER,
Plaintiff-Appellant,

vs.

STATE BAR OF MICHIGAN, THE SUPREME COURT OF THE STATE OF MICHIGAN, et al.,
Defendants-Appellees.

On Appeal from the District Court of the United States, for the Eastern District of Michigan, Southern Division

---

Decided August 4, 1961

Before: MILLER, Chief Judge; CECH and O'SULLIVAN, Circuit Judges.

CECH, Circuit Judge. The United States District Court for the Eastern District of Michigan, Southern Division, dismissed the complaint of the plaintiff-appellant for the reason that it did not contain facts sufficient to constitute a cause of action. Herbert E. Saier, plaintiff-appellant appeals to this Court, seeking a reversal of the order of dismissal.

The defendants in the District Court and appellees here are State Bar of Michigan, several officers and former officers of the State Bar of Michigan, who are sued in their official capacity and individually, and the justices and former justices of the Supreme Court of Michigan, who are sued individually and in their judicial capacity.

Mr. Saier brought this action as a diversity of citizenship case, alleging that he was a citizen of Missouri and that he was damaged in excess of $10,000, exclusive of interest and costs. The district judge considered the complaint as an attempt to state a cause of action under section 1983 of Title 42 U. S. C., known as "The deprivation of civil rights act." The appeal is argued to us as such an action. The appellant has apparently abandoned any claim to jurisdiction by reason of diversity of citizenship. We consider that no cause of action is stated as a diversity case and therefore do not discuss that theory further.

We are of the opinion, as was the district judge, that if any cause of action is stated, the facts as alleged would invoke jurisdiction by virtue of the civil rights act. The question presented then is whether there are sufficient facts alleged in the complaint to show that the appellant was deprived of any "right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." Section 1343(3), Title 28, U. S. C.[1]

The pertinent facts as alleged in the complaint are as follows: On July 16, 1956, the plaintiff-appellant filed a complaint against four lawyers of the Michigan Bar, in the office of the State Bar of Michigan, at Lansing, with Executive Secretary Milton E. Bachman and Executive Assistant Joseph C. Cox. The lawyers involved in the charge were notified of the charges contained in the complaint. The appellant filed an amended and corrected request for investigation on September 10, 1956. On October 3, 1956, Mr. Bachman and Mr. Cox advised him that he had to make out new forms. He refused to do this and on

---

[1] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress." Section 1983 of Title 42 U. S. C.

November 15, 1956 filed a petition for a writ of mandamus with the Supreme Court of Michigan. This petition was denied and subsequently he filed another petition with the same court for writ of mandamus which was also denied.

The complaint does not state the specific charges that were made against the accused lawyers, but inferentially it appears that they involve ". . . unethical conduct, false testimony and attempted murder with a deadly weapon, and with charges of their taking of a complete file out of the Probate Court of the County of Ingham, Michigan."

There is reference in the complaint to suits in various courts of Michigan both past and now pending. It is alleged that three of the accused lawyers have commenced an action on the equity side of the court, in Ingham County, Circuit Court.

No disciplinary action has been taken against the lawyers named in the request for investigation, and the appellant claims that his complaint has not been processed by the Michigan State Bar. This he claims is a denial of a right guaranteed to him under the Fourteenth Amendment of the Federal Constitution. Specifically, he claims it is a denial of due process of law, a denial of equal protection of the laws and unjust discrimination.

The pertinent part of the amendment reads, as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The question before the Court is a very narrow one. To determine that question, we are not concerned with what might be the ultimate outcome of a hearing of the charges against the accused lawyers. Neither is the seriousness of the misconduct complained of material for our determination of the question involved.

Assuming that the appellant's "Request for investigation" of certain attorneys has been denied by the State Bar of Michigan, has he been denied a right which is given to him by the Fourteenth Amendment to the United States Constitution?

Section 1983 of Title 42 U. S. C. provides that an action may be brought for redress of the "deprivation of any rights, privileges, or immunities secured by the Constitution . . ." (Federal). If the appellant has been denied the right of which he complains, his redress would be to have the District Court order the processing of the complaint by the State Bar. The ultimate that he might expect from this would be the disbarment of the accused lawyers. This might give him a certain amount of personal satisfaction but no material gain would result to him as a consequence of such action. It would not give him any judgment against the lawyers of whose misconduct he complains and whose actions caused him financial loss. Therefore, he has not been deprived of "life, liberty, or property. . . ." There are no allegations in the complaint to support a charge of a denial of equal protection of the laws or that he has been the subject of unjust discrimination.

Not only has he not suffered, according to the allegations of his complaint, any deprivation of a right under the Federal Constitution as a matter of fact, but legally no such right as he claims is guaranteed to him by the Federal Constitution.

License to practice law, the continuation of such license, regulation of the practice and the procedure for disbarment and discipline are all matters that are within the province of an individual state. As in Michigan, the creation of the office of attorney, the regulation and control of the practice of law, along with the procedure of disbarment is governed by "The Judicature Act" under the headings "Attorneys and Counselors," section 27.68 et seq. and "State Bar Association," sections 27.101 and 27.102, respectively, of Title 27, Michigan Statutes, Annotated; Rule 15, State Bar of Michigan.

In *In re Lockwood, Petitioner*, 154 U. S. 116, the court said, at p. 117: "In *Bradwell* v. *The State*, 16 Wall. 130 (83 U. S. 130), it was held that the right to practice law in the state courts was not a privilege or immunity of a citizen of the United States; *that the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers that was not transferred for its protection to the Federal government*, and its exer-

cise is in no manner governed or controlled by citizenship of the United States in the party seeking such license." (Emphasis added). And at p. 118: "It was for the Supreme Court of Appeals to construe the statute of Virginia in question, and to determine whether the word 'person' as therein used is confined to males, and whether women are admitted to practice law in that Commonwealth." See also: *Yeiser* v. *Dysart et al*, 267 U. S. 540; *Ayres* v. *Hadaway*, 303 Mich. 589, 595.

In *Theard* v. *United States*, 354 U. S. 278, at p. 281, the court said: "It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in *Konigsberg* v. *California*, 353 U. S. 252, and *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, to sit in judgment on Louisiana disbarments, and we are not in any event sitting in review of the Louisiana judgment. While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court." See also: *Selling* v. *Radford*, 243 U. S. 46; *In re Crow*, 283 F. 2d 685, C. A. 6.

We find no authority and none has been cited to us to support the appellant's contention that he has a right under the Federal Constitution to require the State Bar of Michigan to process his complaint. The regulation of the practice of law, including the procedure of disbarment and discipline of members of the profession, is a function of state government. Consequently there has been no deprivation of right which would give rise to a cause of action under section 1983, Title 42, U. S. C.

In the final analysis, it is a judicial function to pass on the disbarment of a lawyer. As shown heretofore (In re Lockwood, Petitioners, supra), the regulation and control of the practice of law was not a power that was delegated to the Federal government but remained in the states. Under the statutes of Michigan, the Supreme Court of that state has the final determination of a disbarment proceed-

ing. Secs. 27.79, 27.102, Michigan Statutes Annotated; Sec. 25, Rule 15, State Bar of Michigan.

In 1824, Mr. Chief Justice Marshall said: "On one hand, the profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him. On the other, it is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved. *For these objects, some controlling power, some discretion ought to reside in the court.* This discretion ought to be exercised with great moderation and judgment; *but it must be exercised;* and no other tribunal can decide, in a case of removal from the bar, with the same means of information as the court itself." (Emphasis added).

• • •

"The power is one which ought to be exercised with great caution, but which is, we think, incidental to all courts, and is necessary for the preservation of decorum, and for the respectability of the profession." *Ex parte Burr*, 22 U. S. 529, 9 Wheat. 529. See also: *Ex parte Garland*, 71 U. S. 333, 378, 4 Wall. 333, 378.

The appellant has alleged in his complaint that he twice petitioned the Supreme Court of Michigan for a writ of mandamus to require the State Bar officers to process his request for investigation and that his petitions were twice denied. This was a proper forum and if there were constitutional questions involved he could have petitioned the Supreme Court of the United States for certiorari. The District Court cannot review the proceedings of the Supreme Court of Michigan. Having pursued a remedy in a proper forum and in a court with jurisdiction to hear his cause, we are of the opinion that a denial of relief by that court terminated the appellant's litigation to require further action by the State Bar.

After this denial, he should have given consideration to the request of the State Bar Officers. It is alleged in the complaint that on October 3, 1956, he was requested to furnish new forms which he refused to do. There is nothing in the complaint to show that this request was arbitrary

or capricious and, in refusing to comply, the appellant cannot say that the bar refused to process his complaint but, rather, he puts himself in default by his own allegations.

The appellant charges in his complaint that the members of the Supreme Court of Michigan were disqualified from sitting in the mandamus actions for the sole reason that they themselves were members of the Michigan State Bar. The situation is not open to any such arbitrary presumption. Lawyers are officers of the court and the courts have a duty to supervise their conduct. As Mr. Chief Justice Marshall said, in ex parte Burr, supra, "The power is . . . incidental to all courts, and is necessary for the preservation of decorum, and for the respectability of the profession."

The judges are as much interested as any third person could be in the decorum and respectability of the lawyers who practice before them. It is inconceivable that the judges of the Supreme Court would so far transgress the dignity and responsibilities of their high office to protect lawyers in such misconduct, as is inferred here, at the expense of the reputation of its bar.

There is no charge in the complaint that the judges, in denying the petitions for mandamus, acting arbitrarily, capriciously, or maliciously. We must assume then that they acted in good faith in their judicial capacity. Judges are immune from suit arising out of their judicial acts and the civil rights statutes create no exception to this rule. *Bradley* v. *Fisher*, 80 U. S. 335; 13 Wall. 335; *Kenney* v. *Fox*, 232 F. 2d 288, C. A. 6; *Allen* v. *Groat*, 283 F. 2d 692, C. A. 6.

The appellant in his complaint alleges that the Michigan Supreme Court and the Michigan State Bar conspired together and with others unknown to him to deny him the rights of which he complains. The allegations in the complaint are that the appellant filed actions for mandamus in the Supreme Court and that they were denied. None of the elements of conspiracy are pleaded. There is only the conclusion of the pleader.

"The accepted definition of a conspiracy is, a combination of two or more persons by concerted action to accom-

plish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means." *Duplex Co.* v. *Deering*, 254 U. S. 443, 465.

We conclude that the right to require the State Bar to process appellant's request for an investigation of certain lawyers is not a right guaranteed by the Federal Constitution; that litigation to compel the State Bar to process the complaint of the appellant has been adjudicated in a court with jurisdiction to hear the cause and is now terminated, and that the State Bar has not refused to process the complaint but that the appellant is in default for not complying with the request of the State Bar to furnish new forms.

We further conclude that the complaint does not contain facts sufficient to charge a conspiracy against the Supreme Court and the State Bar.

Having reached these conclusions, we do not reach other questions raised by the appellant.[2]

The judgment of the District Court is affirmed.

---

[2]The Integrated Bar Act of Wisconsin was sustained by the Supreme Court of the United States on June 19, 1961, in *Trayton L. Lathrop, Appellant* v. *Joseph D. Donohue*.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 27 1961
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 525

HERBERT E. SAIER,
Petitioner,

vs.

STATE BAR OF MICHIGAN An Association claimed to be a state agency, and MILTON E. BACHMANN, as Executive Secretary of the State Bar of Michigan and Individually, JOSEPH C. COX, as former Executive Assistant of the State Bar of Michigan, and Individually, and JOSEPH H. PLANCK, as Executive Assistant of the State Bar of Michigan and Individually, and RUSSELL A. SEARL, as attorney for the State Bar of Michigan and Individually, and

THE SUPREME COURT OF THE STATE OF MICHIGAN and JOHN R. DETHMERS, as Justice of said Supreme Court and in his Individual capacity, and LELAND W. CARR, as Justice of said Supreme Court and in his individual capacity, and HARRY F. KELLY, as Justice of said Supreme Court and in his Individual capacity, and TALBOT SMITH, as Justice of said Supreme Court and in his Individual capacity, and EUGENE F. BLACK, as Justice of said Supreme Court and in his Individual capacity, and GEORGE EDWARDS, as Justice of said Supreme Court and in his Individual capacity, and JOHN D. VOELKER, as ex-Justice of said Supreme Court and in his Individual capacity, and EDWARD M. SHARPE, as ex-Justice of said Supreme Court and in his Individual capacity,

Respondents

BRIEF ON BEHALF OF RESPONDENTS STATE BAR OF MICHIGAN, BACHMANN, COX, PLANCK AND SEARL IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

J. CAMERON HALL,
General Counsel,
State Bar of Michigan,
1323 Dime Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

RULES OF THE SUPREME COURT OF THE UNITED STATES

PART V. JURISDICTION ON WRIT OF CERTIORARI

19.

CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. * * *"

COUNTER-STATEMENT OF QUESTIONS INVOLVED

I.

Did the complaint allege a cause of action cognizable by the United States District Court?

The District Court answered "No."
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

II.

Was the petitioner a proper party to present the issues described in his complaint?

The District Court answered "No."
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

III.

Did the petitioner state a ground for relief?

The District Court did not specifically reach this issue in its opinion.
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

IV.

Were the members of the Supreme Court of the State of Michigan, or the District Judge or members of the Court of Appeals disqualified?

The District Court answered this question "No" as to the members of the Supreme Court of Michigan.

The Court of Appeals answered this question "No" as to the members of the Supreme Court of Michigan.

Neither the District Court nor the Court of Appeals reached this alleged issue as to the District Judge.

The Court of Appeals did not reach this issue as to the members of the Court of Appeals.

Respondents contend the answer should be "No."

SUBJECT INDEX

	Page
Rules of the Supreme Court of the United States, Part V	i
Counter-Statement of Questions Involved	iii-iv
Counter-Statement of Material Facts	2-8
Argument	9-47
I. Did the complaint allege a cause of action cognizable by the United States District Court?	9-29
A. The Courts of the United States have no jurisdiction to review the conduct of the highest Court of a State, or the State Court's rules and proceedings thereunder, pertaining to whether or not any of the State Court's officers should be disciplined by the State Court for misconduct	9-16
B. The constitutionality of the State's statute creating the State Bar of Michigan and the constitutionality of the rules adopted by the Supreme Court of the State of Michigan concerning the State Bar of Michigan are not determinable in this proceeding	17-26
C. The petitioner's assertions in his requests for investigation of some four Lansing attorneys, his assertions in his complaint filed in the District Court and his assertions herein constitute attempted collateral atacks on proceedings in the lower Courts of a State	27-29
II. Was the petitioner a proper party to present the issues described in his complaint?	29-32

Page

III. Did the petitioner state a ground for relief? 32-40

A. The petitioner has failed to allege circumstances giving rise to damages as to the respondents in this cause..... 32-33

B. The petitioner's references to damages sustained by the petitioner are too inadequate and uncertain to permit speculation as to damages in this proceeding..... 33-35

C. The petitioner has failed to allege circumstances setting forth inequality in the processing of the petitioner's requests for investigation as compared to other requests for investigation filed with the State Bar of Michigan 35-36

D. The petitioner has not demonstrated that he has been denied a hearing..... 36-38

E. The petitioner presented conflicting statements and admonitions whereby the petitioner made it impossible to process his requests for investigation of the attorneys 38-40

IV. Were the members of the Supreme Court of the State of Michigan or the District Judge or members of the Court of Appeals disqualified 41-43

Summary of Argument..... 44-47

Conclusion 47

INDEX TO AUTHORITIES CITED

Cases

	Page
Allen v. Groat, 283 F. 2nd 692, C. A. 6	42
American Ry. Express Co. v. Commonwealth of Kentucky, 273 U. S. 269, 47 S. Ct. 353, 71 L. Ed. 639	24
Arrowsmith v. Harmoning, 118 U. S. 194, 195, 6 S. Ct. 1023, 30 L. Ed. 243	24
Ayres v. Hadaway, 303 Mich. 589, 6 N. W. 2d 905	15, 19, 25
Bonifaci v. Thompson, 252 F. 878	22
Bonner v. Gorman, 213 U. S. 86, 29 S. Ct. 483, 53 L. Ed. 709	24
Bradley v. Fisher, 80 U. S. 335, 13 Wall. 335	42
Bradwell v. Illinois, 16 Wall. 130, 139, 21 L. Ed. 442	14, 19, 21, 25
Burr, Ex parte, 9 Wheat. 529, 6 L. Ed. 152	16, 20
Central Land Co. v. Laidley, 159 U. S. 112, 16 S. Ct. 80, 40 L. Ed. 91	24
Crow, In re, 283 F. 2nd 685, C. A. 6	15
Dunlap v. Byers, 110 Mich. 109, 67 N. W. 1067	29
Duplex Co. v. Deering, 254 U. S. 443, 465	42
Emmons v. Smitt, 58 Fed. Supp. 869 (D. C. E. D. Mich.)	18-23
Emmons v. Smitt, 148 F. 2nd 869, C. C. A. 6	23-25
Erie R. Co. v. Thompkins, 304 U. S. 64, 78, 58 S. Ct. 817, 822, 82 L. Ed. 1188, 114 A. L. R. 1487	25
Garland, Ex parte, 71 U. S. 333, 378, 4 Wall. 333, 378	16
Green v. Elbert, 8 Cir., 63 F. 308	19
Iowa Central Ry. Co. v. State of Iowa, 160 U. S. 389, 393, 16 S. Ct. 344, 40 L. Ed. 467	24
Keenan, Re, 287 Mass. 577	29-30
Kenney v. Fox, 232 F. 2nd 288, C. A. 6	42

Page

Konigsberg v. State Bar of California, 353 U. S. 252, 1 L. Ed. 2nd 810, 77 Sup. Ct. 722..... 10, 15

Konigsberg v. State Bar of California, — U. S. —, 6 L. Ed. 2nd 105..... 11

Lathrop v. Donohue, — U. S. —, 6 L. Ed. 2nd 1191.. 25, 32

Lockwood, Ex parte, 154 U. S. 116, 14 Sup. Ct. 1082, 38 L. Ed. 929..... 19, 25

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 290, 293, 18 S. Ct. 594, 42 L. Ed. 1037..... 24

McDonald v. Oregon, R. & Nav. Co., 233 U. S. 665, 669, 34 S. Ct. 772, 58 L. Ed. 1145..... 24

Petition of Walter O. Estes, In re, 361 U. S. 829, 4 L. Ed. 2nd 71, 80 S. Ct. 77..... 17, 18

Pettiford v. Zoellner, 45 Mich. 358, 8 N. W. 57..... 29

Petranek v. Minneapolis, St. Paul and S. S. M. R. Co., 240 Mich. 655, 216 N. W. 467..... 29

Potter v. Ranlett, 116 Mich. 454, 74 N. W. 661..... 29

Richardson v. Richardson, 309 Mich. 336, 15 N. W. 2d 666, cert. den. 324 U. S. 864, 89 L. Ed. 1420, 65 Sup. Ct. 912..... 29

Rooker v. Fidelity Trust Co., 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362..... 20

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U. S. 232, 1 L. Ed. 2d 796, 77 Sup. Ct. 752..... 10, 15

Selling v. Radford, 243 U. S. 46, 37 S. Ct. 377, 378, 61 L. Ed. 585, Ann. Cas. 1917D 569.....15, 20, 21

Simpson v. Geary, D. C., 204 F. 507..... 22

State of Missouri ex rel. Hurwitz v. North, 271 U. S. 40, 42, 46 S. Ct. 384, 70 L. Ed. 818..... 24

Thatcher, In re, D. C. Ohio, 190 F. 960..... 19, 25

Theard v. United States of America, 354 U. S. 278, 1 L. Ed. 2d 1342, 77 Sup. Ct. 1274..... 12, 15

Page

Tracy v. Ginzberg, 205 U. S. 170, 177, 27 S. Ct. 461, 51 L. Ed. 755 24
United States ex rel. Parker v. Carey, 7 Cir., 135 F. 2d 205 20
Yeiser v. Dysart, 267 U. S. 540 15
Williams v. Riley, 280 U. S. 78 17

Other

Michigan Statutes Annotated, Sections 27.79, 27.102 16
Michigan Supreme Court Rules concerning the State Bar of Michigan, Rule 15 ..... 16, 33, 35, 36, 39
Rules of the Supreme Court of the United States, Part V, Jurisdiction on Writ of Certiorari i
United States Code, Sec. 1983 of Title 42 ..... 7, 13, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 525

HERBERT E. SAIER,
Petitioner,

vs.

STATE BAR OF MICHIGAN An Association claimed to be a state agency, and MILTON E. BACHMANN, as Executive Secretary of the State Bar of Michigan and Individually, JOSEPH C. COX, as former Executive Assistant of the State Bar of Michigan, and Individually, and JOSEPH H. PLANCK, as Executive Assistant of the State Bar of Michigan and Individually, and RUSSELL A. SEARL, as attorney for the State Bar of Michigan and Individually, and

THE SUPREME COURT OF THE STATE OF MICHIGAN and JOHN R. DETHMERS, as Justice of said Supreme Court and in his Individual capacity, and LELAND W. CARR, as Justice of said Supreme Court and in his individual capacity, and HARRY F. KELLY, as Justice of said Supreme Court and in his Individual capacity, and TALBOT SMITH, as Justice of said Supreme Court and in his Individual capacity, and EUGENE F. BLACK, as Justice of said Supreme Court and in his Individual capacity, and GEORGE EDWARDS, as Justice of said Supreme Court and in his Individual capacity, and JOHN D. VOELKER, as ex-Justice of said Supreme Court and in his Individual capacity, and EDWARD M. SHARPE, as ex-Justice of said Supreme Court and in his Individual capacity,

Respondents

BRIEF ON BEHALF OF RESPONDENTS STATE BAR OF MICHIGAN, BACHMANN, COX, PLANCK AND SEARL IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

COUNTER-STATEMENT OF MATERIAL FACTS

The petitioner's complaint as filed in the United States District Court consisted of 92 pages and included 160 numbered paragraphs. This Counter-Statement of Facts can only be in narrative form without challenging each statement of petitioner, due to the length of the complaint and the many conclusions in petitioner's statement.

The petitioner indicated in said complaint (1b) that the origin of the circumstances to which he refers was in the death of one Jessie E. Saier on April 14, 1951, the petitioner being one of three sons of said decedent. The Will of said Jessie E. Saier as filed for probate left various bequests and then left a major portion of the estate, one-third to each of the decedent's sons, including the petitioner (1b). The petitioner not only admits, but asserts, that said Will of Jessie E. Saier, deceased, was duly admitted to probate in the Probate Court for the County of Ingham on September 6, 1955, at which time the petitioner was present and stated affirmatively that he had no objection whatsoever to the admission of said Will to probate (22a and 23a).

In said complaint as filed with the District Court, the petitioner described at length various State Court proceedings pertaining to said Estate of Jessie E. Saier, deceased.

The petitioner then alleged that approximately on July 16, 1956, he filed Requests for Investigation, or complaints, against three or four Lansing attorneys who were connected with the State Court proceedings involving said estate, alleging misconduct on the part of said attorneys (67a). The petitioner then alleges that the Request for Investigation forms were re-drafted and sent to the State

Bar of Michigan (68a). The petitioner further describes disputed facts with reference to whether or not on October 8, 1956 a letter was addressed from the Executive Secretary of the State Bar of Michigan to the petitioner, returning to him the complaint forms which he had filed with the suggestion that they should contain more specific allegations as to misconduct (28a and 29a). The petitioner stated in the complaint as filed in the District Court that the forms were not returned to him, but he acknowledged in the complaint that the Executive Secretary of the State Bar of Michigan claimed to have returned such forms to the petitioner with a letter of October 8, 1956 suggesting that the description of misconduct would need to be more precise (28a and 29a). In any event, the petitioner did not allege that he filed any further complaint forms with the State Bar of Michigan.

At the time of filing the requests for investigation of four Lansing attorneys, the petitioner at the same time filed a single file of some 56 pages of miscellaneous exhibit material, photostatic copies and other matters to which reference was made in the requests for investigation as to each of the four lawyers (68a). In other words, the petitioner filed forms of request for investigation as to three or four lawyers and then filed separately only a single set of various exhibits to which reference was made in each of the requests for investigation.

In the form in which these papers were filed by the petitioner, as indicated by the petitioner's own statement (68a), the single file of some 56 pages of exhibits and photostatic copies was incorporated by the petitioner by reference in each of the four sets of requests for investigation, requiring cross-reference between the exhibits and requests for investigation in order to ascertain the nature of the charges. Not only did the petitioner fail to file a separate

set of exhibits as to each of the attorneys concerning whom he has requested an investigation file be established, he also failed to include an additional set of these exhibits for each of those files (68a and 71a) for service upon the respondent attorneys.

Further, at the time the requests for investigation of the three or four Lansing attorneys were filed by the petitioner, they were filed under the petitioner's own admonition (71a and 72a):

> "These are not to be filed with either the Ingham County Probate Court *or any other court, directly or indirectly* by any other person in an attempt to get this heir out of the will, as this heir is not contesting the will in his own behalf or in behalf of any other person." (Emphasis supplied.)
>
> "This file has all of the exhibits in their proper place in the setting out the allegations in their order. In other words each of the allegations of this petitioner are followed by evidence of proof, so that this Bar Committee will not have to look all through the file to find the evidence."

In addition, the petitioner repeatedly emphasized that the Will of said Jessie E. Saier was *duly* admitted to probate and the petitioner stated in Court at the time of admission of said Will that he had no objection to such admission (22a and 23a). In the same requests for investigation, the petitioner set forth in detail in many paragraphs, one of which appeared as paragraph 86 of the complaint as filed in the District Court (1b), statements alleging that the Will as admitted to probate in said estate was not properly executed. The petitioner, in the requests for investigation, requested the grievance organization of the State Bar of Michigan to find that the respondent attorneys had participated in the allegedly-illegal signing of

a purported Will (1b) in order to find them guilty of various of the acts charged by the petitioner, while at the same time taking the position that the Will was properly admitted (22a and 23a) that he had no objection to the Will and that this alleged evidence of improper execution of the Will was not to be filed in any Court (71a and 72a).

It is further noted that nowhere in the complaint filed in the District Court does the petitioner allege, nor can he properly allege, that the requests for investigation or any of them were dismissed by the grievance organization of the State Bar of Michigan, either administratively or otherwise. The petitioner correctly has indicated that a dispute existed between the petitioner and the staff of the State Bar of Michigan (27a-29a) as to whether he had complied with the rule requiring a brief statement setting forth explicitly the purported misconduct of which complaint was made. He filed no further revisions of the requests for investigation after the second revision filed by the petitioner. The petitioner further alleges, and accurately, that after filing the second revision of his requests for investigation, while a dispute still was existing as to whether they were in a form compatible with the rules requiring a brief statement of specific misconduct, he filed a series of two petitions (10a-11a) for writs with the Supreme Court of the State of Michigan (rather than attempting a further revision of his requests for investigation).

The petitioner states that in 1956 and again in 1958 the plaintiff petitioned the Supreme Court of the State of Michigan for a Writ of Mandamus with reference to grievance proceedings as to said respondent attorneys (10a-11a), setting forth in full his position in the complaint, and that in both instances the Supreme Court of the State of Michigan denied the petitioner's petitions for Writs of Manda-

mus (66a). The petitioner does not allege, nor can he allege, that he attempted any further revision of his requests for investigation, requiring a *brief statement of explicit charges* of misconduct. Neither did he file any appeal to this Court from the decisions of the Michigan Supreme Court.

On the basis of the matters in the complaint as filed in the District Court, the petitioner requested that the District Court find the defendants guilty of failure to perform their respective duties, that they be found guilty of conspiring together and with others to deny the petitioner his constitutional rights as to equal protection, due process, impartial tribunal and freedom from unjust discrimination, that the Court find certain sections of Rule 15 of Michigan Supreme Court Rules pertaining to the State Bar of Michigan to be unconstitutional, that the Court find that the Michigan Statute creating the integrated Bar of the State of Michigan to be unconstitutional and that the petitioner be awarded judgment for damages.

It is further noted that the petitioner claims to have been damaged by the conduct of the four respondent attorneys in Lansing, but nowhere does he allege in his complaint that, at any time during the years that the estate and collateral suits have been pending, the petitioner instituted suit against any one of the respondent attorneys either to enjoin the attorneys' conduct of which he complains nor for damages by reason of any loss which he might have sustained. The petitioner indicates that the only relief which he seeks as to the attorneys is to have hearings with reference to whether or not the attorneys should be disciplined as attorneys. He has not, and does not here, seek relief against such attorneys whom he claims gave rise to his troubles, either by way of injunction or suit at law.

We further refer the Court to the concise statement of facts as contained in the opinion of the Court of Appeals for the Sixth Circuit (Appendix to Petitioner's Petition, pages 28 and 29), more particularly as follows:

> "Mr. Saier brought this action as a diversity of citizenship case, alleging that he was a citizen of Missouri and that he was damaged in excess of $10,000, exclusive of interest and costs. The district judge considered the complaint as an attempt to state a cause of action under section 1983 of Title 42 U. S. C., known as 'The deprivation of civil rights act.' The appeal is argued to us as such an action. The appellant has apparently abandoned any claim to jurisdiction by reason of diversity of citizenship. We consider that no cause of action is stated as a diversity case and therefore do not discuss that theory further.
>
> We are of the opinion, as was the district judge, that if any cause of action is stated, the facts as alleged would invoke jurisdiction by virtue of the civil rights act. The question presented then is whether there are sufficient facts alleged in the complaint to show that the appellant was deprived of any 'right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.' Section 1343(3), Title 28, U. S. C.[1]
>
> The pertinent facts as alleged in the complaint are as follows: On July 16, 1956, the plaintiff-appellant filed a complaint against four lawyers of the

---

[1] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress." Section 1983 of Title 42 U. S. C.

Michigan Bar, in the office of the State Bar of Michigan, at Lansing, with Executive Secretary Milton E. Bachman and Executive Assistant Joseph C. Cox. The lawyers involved in the charge were notified of the charges contained in the complaint. The appellant filed an amended and corrected request for investigation on September 10, 1956. On October 3, 1956, Mr. Bachman and Mr. Cox advised him that he had to make out new forms. He refused to do this and on November 15, 1956 filed a petition for a writ of mandamus with the Supreme Court of Michigan. This petition was denied and subsequently he filed another petition with the same court for writ of mandamus which was also denied.

The complaint does not state the specific charges that were made against the accused lawyers, but inferentially it appears that they involve '• • • unethical conduct, false testimony and attempted murder with a deadly weapon, and with charges of their taking of a complete file out of the Probate Court of the County of Ingham, Michigan.'

There is reference in the complaint to suits in various courts of Michigan both past and now pending. It is alleged that three of the accused lawyers have commenced an action on the equity side of the court, in Ingham County, Circuit Court.

No disciplinary action has been taken against the lawyers named in the request for investigation, and the appellant claims that his complaint has not been processed by the Michigan State Bar. This he claims is a denial of a right guaranteed to him under the Fourteenth Amendment of the Federal Constitution. Specifically, he claims it is a denial of due process of law, a denial of equal protection of the laws and unjust discrimination."

ARGUMENT

I.

DID THE COMPLAINT ALLEGE A CAUSE OF ACTION COGNIZABLE BY THE UNITED STATES DISTRICT COURT?

The District Court answered "No."
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

A. The Courts of the United States have no jurisdiction to review the conduct of the highest Court of a State, or the State Court's rules and proceedings thereunder, pertaining to whether or not any of the State Court's officers should be disciplined by the State Court for misconduct.

It has been held repeatedly that matters pertaining to the misconduct of attorneys as officers of the Courts of the several States shall be within the exclusive jurisdiction of the Courts of the States themselves and, on the other hand, any discipline imposed on attorneys as officers of Federal Courts shall be within the jurisdiction of the Federal Courts exclusively. Otherwise stated, a United States Court will not supervise a State Court in administration of discipline to officers of the State Court.

The Supreme Court of the United States has set forth a line of demarcation as to those matters included within, and those matters excluded from, jurisdiction of the Federal Courts as pertaining to the license to practice law in the Courts of a State: Upon application to a Federal Court by an applicant for admission to the Bar of a State, the Federal Court will assume jurisdiction to the extent of determining whether or not denial of admission to the

State Court is by reason of a matter which contravenes the "due process" or "equal protection" clause of the Fourteenth Amendment. On the other hand, the Federal Courts and the State Courts each are autonomous in determining whether or not discipline shall be imposed upon an attorney licensed to practice in either type of Court. This line of distinction as established by the Supreme Court of the United States is set forth in the series of three cases appearing in 1 Law Edition 2d of U. S. Supreme Court Reports, all decided in 1957 (one being reheard in 1960, decided 1961):

(1) In the case of *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U. S. 232, 1 Law Edition 2d 796, 77 Supreme Court 752, the petitioner was an applicant for admission to the Bar of the State of New Mexico. Over fifteen (15) years prior to the application he had been arrested on charges not involving moral turpitude and never tried. He had been a member of the Communist Party some fifteen (15) years earlier. In that case, the United States Supreme Court held that the State of New Mexico had deprived the petitioner of due process in denying him admission to practice law in the State of New Mexico, for there was not a sufficient showing of lack of good moral character. The Supreme Court of the United States assumed jurisdiction of the case and founded its decision upon the determination that:

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."

(2) In *Konigsberg v. State Bar of California*, 353 U. S. 252, 1 Law Edition 2nd 810, 77 Supreme Court 722, the petitioner likewise was an applicant for admission to the

practice of law in the Courts of a State. In that case, there was a charge, not reliably proven, that the petitioner had been a member of the Communist Party in 1941 and upon questioning by the Committee of Bar Examiners of the State of California some fifteen (15) years later, the petitioner refused to answer certain questions about membership in the Communist Party on the ground that a State could not inquire into an applicant's political opinions or associations. The opinion of Mr. Justice Black specifically indicates that the State Bar of California did not base its exclusion of the petitioner upon his failure to answer and, accordingly, the opinion specifically excludes determination as to whether or not failure to answer in itself is an adequate reason for denial of admission to the Bar of a State. The Court determined that even if the petitioner had belonged to the Communist Party some fifteen (15) years earlier, which was not completely established, that was not sufficient to indicate that fifteen (15) years later the petitioner advocated overthrow of the Government by force. The Court thereupon determined that the denial of the petitioner's application for admission to the State Bar of California was not reasonable and, accordingly, was in denial of the "due process" clause.

After a second rejection of Mr. Konigsberg's application for admission to the State Bar of California, he filed a further petition for a Writ of Certiorari with the Supreme Court of the United States at which time this Court determined that, as to Mr. Konigsberg's refusal to answer questions as to prior membership in the Communist Party (Mr. Justice Harlan delivering the opinion of the Court):

> "We think it clear that the Fourteenth Amendment's protection against arbitrary state action does not forbid a State from denying admission to a bar applicant so long as he refused to provide unprivileged answers to questions having a substantial relevance to his qualifications." *Konigsberg v. State*

Bar of Calif., — U. S. —, 6 L. ed. 2nd 105 (1961), 113.

(3) Having defined in the foregoing cases the extent to which it would assume jurisdiction under the "due process" clause with reference to applicants for admission to the Bar of a State, the Supreme Court of the United States then considered the case of *Theard v. United States of America*, 354 U. S. 278, 1 Law Edition 2d 1342, 77 Supreme Court 1274. In that case, the petitioner had been disbarred by the Supreme Court of the State of Louisiana by reason of having uttered a forgery some eighteen (18) years earlier. The opinion of the Court was delivered by Mr. Justice Frankfurter and set forth a general discussion with reference to the finality of determinations by State Courts and by Federal Courts as to the license to practice law, with reference to whether or not determinations by either Court were binding in the other. In this instance, the Supreme Court of the United States determined that the petitioner's disbarment by the Supreme Court of Louisiana was "entitled to high respect, but is not conclusively binding on the federal courts". The Court stated:

> "While a lawyer is admitted ino a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. The two judicial systems of courts, the state judicatures and the federal judiciary, have *autonomous control* over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court." (Emphasis supplied.)

In accordance with this principle, the Supreme Court of the State of Michigan has inherent power to determine what persons may continue to be listed on the roster of attorneys licensed to practice law in the Courts of the

State of Michigan. This inherent power of the Supreme Court of the State of Michigan, and the manner in which it is exercised by that Court, the content of any rules pertaining to that power made by the Michigan Supreme Court, together with conduct under such rules, remain in the State and the same do not present substantial Federal questions either as to the content or the manner of exercise.

We emphasize the excellent opinion of the Court of Appeals for the Sixth Circuit, finding that the Petitioner has no right to have a complaint against a Michigan lawyer processed secured to him by the Fourteenth Amendment to the United States Constitution. The Court of Appeals for the Sixth Circuit stated that (Petitioner's Appendix, 29 through 32):

> "The pertinent part of the amendment reads, as follows: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'
>
> "The question before the Court is a very narrow one. To determine that question, we are not concerned with what might be the ultimate outcome of a hearing of the charges against the accused lawyers. Neither is the seriousness of the misconduct complained of material for our determination of the question involved.
>
> "Assuming that the appellant's 'Request for investigation' of certain attorneys has been denied by the State Bar of Michigan, has he been denied a right which is given to him by the Fourteenth Amendment to the United States Constitution?
>
> "Section 1983 of Title 42 U. S. C. provides that an action may be brought for redress of the 'de-

privation of any rights, privileges, or immunities secured by the Constitution * * *' (Federal). If the appellant has been denied the right of which he complains, his redress would be to have the District Court order the processing of the complaint by the State Bar. The ultimate that he might expect from this would be the disbarment of the accused lawyers. This might give him a certain amount of personal satisfaction but no material gain would result to him as a consequence of such action. It would not give him any judgment against the lawyers of whose misconduct he complains and whose actions caused him financial loss. Therefore, he has not been deprived of 'life, liberty, or property * * *.' There are no allegations in the complaint to support a charge of a denial of equal protection of the laws or that he has been the subject of unjust discrimination.

"Not only has he not suffered, according to the allegations of his complaint, any deprivation of a right under the Federal Constitution as a matter of fact, but legally no such right as he claims is guaranteed to him by the Federal Constitution.

"License to practice law, the continuation of such license, regulation of the practice and the procedure for disbarment and discipline are all matters that are within the province of an individual state. As in Michigan, the creation of the office of attorney, the regulation and control of the practice of law, along with the procedure of disbarment is governed by 'The Judicature Act' under the headings 'Attorneys and Counselors,' section 27.68.et seq. and 'State Bar Association,' sections 27.101 and 27.102, respectively, of Title 27, Michigan Statutes Annotated; Rule 15, State Bar of Michigan.

"In *In re Lockwood, Petitioner*, 154 U. S. 116, the court said, at p. 117: 'In *Bradwell v. The State*, 16 Wall. 130 (83 U. S. 130), it was held that the right to practice law in the state courts was not a privilege or immunity of a citizen of the United States;

that the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers that was not transferred for its protection to the Federal government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license.' (Emphasis added.) And at p. 118: 'It was for the Supreme Court of Appeals to construe the statute of Virginia in question, and to determine whether the word "person" as therein used is confined to males, and whether women are admitted to practice law in that Commonwealth.' See also: *Yeiser v. Dysart et al.*, 267 U. S. 540; *Ayres v. Hadaway*, 303 Mich. 589, 595.

"In *Theard v. United States*, 354 U. S. 278, at p. 281, the court said: 'It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in *Konigsberg v. California*, 353 U. S. 252, and *Schware v. Board of Bar Examiners*, 353 U. S. 232, to sit in judgment on Louisiana disbarments, and we are not in any event sitting in review of the Louisiana judgment. While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court.' See also: *Selling v. Radford*, 243 U. S. 46; *In re Crow*, 283 F. 2d 685, C. A. 6.

"We find no authority and none has been cited to us to support the appellant's contention that he has a right under the Federal Constitution to require the State Bar of Michigan to process his complaint. The regulation of the practice of law, including the procedure of disbarment and discipline of members of the profession, is a function of state government.

Consequenty there has been no deprivation of right which would give rise to a cause of action under section 1983, Title 42, U. S. C.

"In the final analysis, it is a judicial function to pass on the disbarment of a lawyer. As shown heretofore (In re Lockwood, Petitioners, supra), the regulation and control of the practice of law was not a power that was delegataed to the Federal government but remained in the states. Under the statutes of Michigan, the Supreme Court of that state has the final determination of a disbarment proceeding. Secs. 27.79, 27.102, Michigan Statutes Annotated; Sec. 25, Rule 15, State Bar of Michigan.

"In 1824, Mr. Chief Justice Marshall said: 'On one hand, the profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him. On the other, it is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved. *For these objects, some controlling power, some discretion ought to reside in the court.* This discretion ought to be exercised with great moderation and judgment; *but it must be exercised;* and no other tribunal can decide, in a case of removal from the bar, with the same means of information as the court itself." (Emphasis added.)

" 'The power is one which ought to be exercised with great caution, but which is, we think, incidental to all courts, and is necessary for the preservation of decorum, and for the respectability of the profession.' *Ex parte Burr,* 22 U. S. 529, 9 Wheat. 529. See also: *Ex parte Garland,* 71 U. S. 333, 378, 4 Wall. 333, 378."

B. The constitutionality of the State's statute creating the State Bar of Michigan and the constitutionality of the rules adopted by the Supreme Court of the State of Michigan concerning the State Bar of Michigan are not determinable in this proceeding.

As indicated elsewhere in this brief, the petitioner has failed to set forth a ground for relief in the United States District Court. The petitioner having failed to set forth a justiciable issue other than constitutionality, the Federal Courts have no authority to review constitutionality of either a State statute or of rules established by the Supreme Court of the State of Michigan, as independent and sole issues in this cause.

As stated by Mr. Justice McReynolds in *Williams v. Riley*, 280 U. S. 78:

> "The Federal Courts have no power *per se* to review and annul acts of state legislatures upon the ground that they conflict with the Federal or state constitution. 'That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is to rest upon such an act.'"

The constitutionality of the act creating the State Bar of Michigan, being Acts 58 of Public Acts of the State of Michigan of 1935, Michigan Statutes Annotated, Section 27.101 and 27.102, together with Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan (relating to procedures pertaining to the processing of grievances and petitions for reinstatement) were presented to the Supreme Court of the United States, *in re Petition of Walter O. Estes*. The State Bar of Michigan filed a brief in opposition thereto setting forth the manner in which said Rule 15 complies with the "due process" re-

quirements. The Supreme Court of the United States dismissed the petition for Writ of Certiorari. See *In the matter of Walter O. Estes*, 361 U. S. 829, 4 L. ed. 2nd 71, 80 S. Ct. 77.

We direct the Court's attention to the case of *Emmons v. Smitt*, 58 Federal Supplement 869, in the District Court of the United States for the Eastern District of Michigan, Southern Division (1944). Grievance proceedings were pending in the State Bar of Michigan with reference to the conduct of Harold H. Emmons, an attorney, being the plaintiff in the District Court suit. The defendants in the District Court were various State Bar officials, as to whom Mr. Emmons asked that an injunction be issued to restrain continuance of the grievance proceedings. Mr. Emmons contended that he had a right to be heard in a Court under the provisions of the Michigan Declaratory Judgment Statute, that the Supreme Court of Michigan had denied Mr. Emmons a right to be so heard, on the theory that he was "a lawyer" ignoring his rights "as a citizen", that he was or was about to be deprived of his property without due process of law, contrary to the Fifth Amendment and, further, that the Supreme Court of Michigan had abridged Mr. Emmons' privilege as a citizen of the United States by denying him equal protection of the law, contrary to the Fourteenth Amendment. The defendants in the District Court case, including the State Bar of Michigan, filed a motion to dismiss, which motion was granted in the District Court. In that suit, one of the prayers in the complaint in the District Court was that Act 58 of the Public Acts of Michigan for the year 1935, creating the State Bar of Michigan and authorizing the Supreme Court of Michigan to provide for the organization, regulation and rules thereof, be declared unconstitutional and void, under the provisions of the Constitution of the State of Michigan. The

District Court noted that Mr. Emmons had failed to present cases in the Court of his position in that connection, concluding that he had abandoned this position prior to the District Court's determination, and in addition, the District Court made reference to *Ayres v. Hadaway*, 303 Mich. 589, 6 N. W. 2d 905, in which the Supreme Court of Michigan held that the statute creating the State Bar of Michigan was constitutional, and from which the District Court noted there had been no appeal to the Supreme Court of the United States.

In addition, in the case of *Emmons v. Smith*, the District Court reviewed the constitutionality of the statute creating the State Bar of Michigan with reference to the Fifth Amendment, that "no person shall * * * be deprived of life, liberty or property, without due process of law." With reference to that question presented by the plaintiff in the District Court, the District Court held as follows:

> "The answer is 'no', since state and federal courts have all held that the right to practice law is not a property right nor is it a privilege granted or defended by the Federal Constitution. *Bradwell v. Illinois*, 16 Wall. 130, 139, 21 L. Ed. 442, after referring to previously decided cases, states the position of our highest tribunal in these words: 'unless we are wholly and radically mistaken in the principles on which those cases are decided, the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers which are not transferred for its protection to the Federal government.' See *Ex parte Lockwood*, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929; and *Green v. Elbert et al.*, 8 Cir., 63 F. 308.
>
> The right to practice law is NOT A PROPERTY RIGHT. *In re Thatcher*, D. C. Ohio, 190 F. 960; and *Ayres v. Hadaway*, 303 Mich. 589, 6 N. W. 2nd 905.

> The power of a court to investigate the conduct of its own officers is inherent. *Ex parte Burr,* 9 Wheat. 529, 6 L. Ed. 152.
>
> And while it may be contended that most of these cases involved admission to practice, it is also the rule of disbarment. See *Selling v. Radford,* 243 U. S. 46, 37 S. Ct. 377, 378, 61 L. Ed. 585, Ann. Cas. 1917D, 569, where it was held: '(a) that we have no authority to re-examine or reverse, as a reviewing court, the action of the supreme court of Michigan in disbarring a member of the Bar of the courts of that state for personal and professional misconduct; (b) that the order of disbarment is not binding upon us as the thing adjudged in a technical sense; • • • Meeting this situation, we are of opinion that, on the case presented, our duty is not to review the action of the state court of last resort,—a power which we do not possess."

In addition, in the case of *Emmons v. Smitt,* the District Court disposed of the question of constitutionality of the act creating the State Bar of Michigan under the provisions of the Fourteenth Amendment, that "Section 1 • • • no State shall • • • deny to any person within its jurisdiction the equal protection of the laws." In that connection, the District Court held as follows:

> "We cannot under the guise of 'constitutional rights violated' act as an appeal court over the Supreme Court of Michigan. *Rooker v. Fidelity Trust Company,* 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362; *United States ex rel. Parker v. Carey,* 7 Cir. 135 F. 2d 205. If a state court misses—and we carefully refrain from hinting that it has—but if it does miss in the interpretation of the scope of one of its own statutes—surely a federal court cannot interfere; otherwise every case triable by a state court could be brought here for review and the chaos to follow would be beyond description.

And even if we did have that right, we again direct attention to the fact that up to this point plaintiff has not been disbarred or disciplined and, as yet, the Michigan court has not finally refused to interpret the legal effect of the decrees and orders involved. He will have his day in court on that question. There is no denial to plaintiff of the 'equal protection' clause just because a legal question that he desires to have settled immediataely is to be taken up in a different order and by an augmented tribunal. We have been shown no authorities that Mr. Emmons can pick his own time and his own tribunal for hearing.

We concede, but do not determine, that a situation might possibly exist where, if the Supreme Court of Michigan arbitrarily and capriciously prohibited a state circuit court from proceeding under the declaratory judgment statute, the wronged person would have redress to either the Supreme Court of the United States, or to this court. But here the situation is different because the plaintiff is a lawyer and the Supreme Court of the State of Michigan by its inherent right has decreed the method by which a lawyer who is faced with disbarment or discipline can have his rights determined. The right to control and regulate the granting of a license to practice law in the State of Michigan belongs to the State and in Michigan is governed entirely by the Supreme Court. *Bradwell v. Illinois; Selling v. Redford, supra,* and other cases cited herein.

As a member of the bar plaintiff is going to have the question of what the legal breadth of those orders and decrees is settled, and when that happens, the effect will be the same as though the declaratory judgment had been the medium. But because Mr. Emmons is a lawyer and his right to practice law and not his rights as a citizen are being attacked, the procedure is entirely within jurisdiction of the state. If in the course of events his inter-

pretation of the scope of those orders and decrees is correct the matter is ended. If on the other hand the Supreme Court holds against him this Court would have no power to review."

The District Court also considered, in *Emmons v. Smitt*, the claim that the plaintiff's rights were violated with reference to the so-called "civil rights statute". In that connection, the District Court stated:

> "Claim is also made by plaintiff that he has a right to be in this court by virtue of the Judicial Code, title 28 U.S.C.A., Section 41, subparagraph 14. This is known as the 'civil rights statute'. But the civil rights which are protected by that paragraph are only those rights, privileges and immunities secured by the Constitution of the United States or some law of the United States passed pursuant to constitutional authority. *Simpson v. Geary*, D. C., 204 F. 507. It does not for example confer jurisdiction to enjoin a draft board for inducting plaintiff into the military service even though it is alleged that it so inducted him in violation of his constitutional and legal (civil) rights. *Bonifaci v. Thompson*, 252 F. 878."

The District Court summarized its holdings as follows:

> "(a) That the right to practice law is not a property right within the meaning of the Constitution.
>
> (b) That the act creating the State Bar of Michigan is constitutional.
>
> (c) That the right to practice law and the conduct of attorneys is strictly within the control of the State of Michigan and its Supreme Court.
>
> (d) That the declaratory judgment statute does not apply where there is a special statutory method for the determination of the particular type of case as in this instance.

(e) That there is no violation of the Fourteenth Amendment where there is a tribunal for hearing provided.

(f) That the civil rights statute stems from the rights, privileges and immunities secured by the Constitution and is not applicable in the case at bar."

The case of *Emmons v. Smitt* was appealed to the Court of Appeals for the Sixth Circuit, the opinion (1945) being set forth in 149 Federal 2d 869. In the opinion of the Court of Appeals, the Court stated that:

"Apropos of the charge that plaintiff was denied due process of law and equal protection of the laws, it is enough to say that Article VII, Sec. 4 of the Constitution of the State of Michigan vests in the Supreme Court 'general superintending control over all inferior courts; and • • • power to issue • • • and other original and remedial writs, and to hear and determine the same', and that under Sec. 27.29 of the Michigan Judicature Act, Mich. Stat. Ann. Vol. 20, p. 71, Comp. Laws 1929, Sec. 13535, the Supreme Court is granted specific power to issue 'writs of • • • prohibition • • • and • • • other original and remedial writs which may be necessary for the due execution of the law and the administration of justice, and the full and perfect exercise of its jurisdiction, and to hear and determine the same.'

The complaint sets out that plaintiff was a party defendant to the petition for the writ of prohibition and appeared before the Supreme Court and made his defense thereto and that after the writ issued in conformity with the court's opinion, the plaintiff filed at least two petitions to rehear, in which he set up the same constitutional objections now advanced and that these petitions for rehearing and reconsideration were denied. In other words, the complaint fails to show that plaintiff was denied any reasonable opportunity to make his defense before

the Supreme Court. The contention that he was denied the benefit of due process therefore necessarily fails. *State of Missouri ex rel. Hurwitz v. North*, 271 U. S. 40, 42, 46 S. Ct. 384, 70 L. Ed. 818. The complaint that the issuance of the writ of prohibition was erroneous falls far short of a challenge that due process was lacking in the proceedings which led up to it. See *American Ry. Express Co. v. Commonwealth of Kentucky*, 273 U. S. 269, 47 S. Ct. 353, 71 L. Ed. 639; *Arrowsmith v. Harmoning*, 118 U. S. 194, 195, 6 S. Ct. 1023, 30 L. Ed. 243; *Iowa Central Ry. Co. v. State of Iowa*, 160 U. S. 389, 393, 16 S. Ct. 344, 40 L. Ed. 467; *Tracey v. Ginzberg*, 205 U. S. 170, 177, 27 S. Ct. 461, 51 L. Ed. 755; *Bonner v. Gorman*, 213 U. S 86, 29 S. Ct 483, 53 L. Ed. 709; *Central Land Co. v. Laidley*, 159 U. S. 112, 16 S. Ct. 80, 40 L. Ed. 91; *McDonald v. Oregon, R. & Nav. Co.*, 233 U. S. 665, 669, 34 S. Ct. 772, 58 L. Ed. 1145.

The contention that plaintiff was denied equal protection of the laws as provided by the Fourteenth Amendment is unwarranted. There is nothing of substance in the complaint that the writ of prohibition was arbitrarily or capriciously issued or with any intention of affecting the rights of plaintiff as distinguished from those of any other citizen who had been or who might be found in the same class or confronted with the same circumstances. See *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 290, 293, 18 S. Ct. 594, 42 L. Ed. 1037."

The Court of Appeals further stated:

"We search in vain for a basis for jurisdiction of the District Court over plaintiff's action, in so far as it seeks to secure to him the right to practice his profession. The claim that it is found in sub-section (14) of Sec. 41, 28 U.S.C.A. (Suits to redress deprivation of civil rights) is without merit, since plaintiff's right to practice law is not secured to him by the Constitution nor by any law of the United States.

It is not a property right but a privilege granted by the State of Michigan. *Ayres v. Hadaway*, 303 Mich. 589, 6 N. W. 2nd 905; see also *Bradwell v. State of Illinois*, 16 Wall. 130, 21 L. Ed. 442; *In re Lockwood*, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929, *In re Thatcher*, D. C., 190 F. 969, 975.

The contention that Act 58 of the Public Acts of Michigan of 1935, creating a State Bar of Michigan, violates Article XII, Sections 1 and 2 of the Michigan State Constitution, presents no federal question. The proposition, if material to plaintiff's interests, must be determined, if it has not already been in *Ayres v. Hadaway, supra*, by the Supreme Court of the State, and 'is not a matter of federal concern.' *Erie R. Co. v. Thompkins*, 304 U. S. 64, 78, 58 S. Ct. 817, 822, 82 L. Ed. 1188, 114 A. L. R. 1487."

This Court is most familiar with its opinion of June 19, 1961 in the matter of *Trayton L. Lathrop, Appellant v. Joseph D. Donohue*, — U. S. —, 6 L. ed. 2nd 1191, in which this Court sustained constitutionality of the integration of the State Bar of Wisconsin. If the issue as to constitutionality of the integration of the State Bar of Michigan were before this Court, such constitutionality in that event should be upheld by reason of the content of the opinions of this Court in the *Lathrop* case.

Certainly, the determination which the petitioner requests in this matter would impose an overwhelming burden on the Federal Courts if the petitioner's position were correct. The result of the petitioner's requests in this proceeding would require that in any case in which a request for investigation is filed with a State grievance organization with reference to a member of any State Bar, in a case in which a hearing does not ensue, the Federal Court would be required to:

(a) Review the content of the request for investigation,

(b) Review the exhibits filed therewith,

(c) Determine that a proper number of copies had been filed with such state bar association to facilitate the processing of the matter under the grievance regulations of that State,

(d) Review the attorney's answer;

(e) Decide whether a sufficient issue is presented under the Canons of Ethics,

(f) Decide whether there has been compliance with reasonable procedural requirements of the State,

and, if hearings result, to review upon application:

(g) The manner in which the hearings were conducted,

(h) What witnesses were included and excluded,

(i) Whether the testimony of the witnesses reasonably established that misconduct had or had not been committed,

(j) Whether such grievance hearings were presented in adequate form to the Courts of that State, and

(k) Whether or not the Courts of that State acted reasonably on the basis of the request for investigation as filed, the attorney's answer, the proceedings had before the grievance committee and the testimony presented to the committee.

We submit that the Constitution does not contemplate, nor should the Federal Courts undertake, such potential detailed review of whether or not hearings should have been held, the nature of the hearings or the conduct of the State Courts, in matters pertaining to whether or not attorneys should be disciplined in and by the several States as officers of the Courts of the States.

C. The petitioner's assertions in his requests for investigation of some four Lansing attorneys, his assertions in his complaint filed in the District Court and his assertions herein constitute attempted collateral attacks on proceedings in the lower Courts of a State.

The petitioner states that the Will of Jessie E. Saier, deceased, was *duly admitted* to probate by the Probate Court for the County of Ingham, State of Michigan, that the petitioner attended the hearing on admission of the Will and upon inquiry, the petitioner stated that he had no objections whatsoever to the admission of said Will to probate (22a and 23a).

Upon presentation of his assertions to the State Bar of Michigan and in his complaint as filed in the District Court, the petitioner included a series of assertions that said Will was not duly executed, quoted from testimony with reference to the execution of the Will and made statements indicated by the petitioner to demonstrate that the Will was not executed in accordance with requirements for the execution of Wills in the State of Michigan (1b).

Further, it is apparent that said Will contained a clause providing a penalty in the event of contest, since the petitioner asserted in the District Court that he had never violated the contest clause contained in the Will (74a).

The petitioner has assumed two completely contrary positions: He asserted both to the State Bar of Michigan and to the District Court that he was possessed of knowledge, and could testify that, the Will of Jessie E. Saier, deceased, was not executed in accordance with legal requirements or in accordance with the testimony in a State Court as to execution of said Will; he stated to the Probate

Court at the time of admission of said Will that he had no objection thereto, that he has never violated the contest clause contained in said Will, and, particularly, that he neglected and refused to present to the Probate Court in the State of Michigan his reasons for demonstrating that said Will should not have been admitted to probate (even though present at the time of its admission). He accused said attorneys of conspiring together to gain admission of said Will even though the same was not executed in accordance with legal requirements according to the petitioner's assertions to the State Bar and to the District Court.

The petitioner requested the State Bar (and thereafter requested the District Court) to make a preliminary determination that said Will was not properly admitted to probate, as a preliminary to requesting discipline of the attorneys who obtained its admission; he refused to present these same assertions in the Probate Court at the hearing attended by the petitioner when the Will was admitted to probate. This obviously constitutes a collateral attack on the circumstances surrounding the admission of the Will to probate, without a direct challenge made by the petitioner in the Court where the Will was so admitted. His collateral attack on estate procedures continued as to subsequent probate proceedings (12a).

It is noted that the petitioner does not in any way challenge the jurisdiction of the Probate Court for the County of Ingham to have determined whether or not said Will should have been admitted to probate. His only challenge is with reference to the validity of the testimony presented in said Probate Court which had jurisdiction of the matter.

There was no authority in the State Bar of Michigan or in the District Court to entertain a collateral attack on the validity of the testimony presented to the Probate

Court for the County of Ingham with reference to the admission of a Will to probate, or other probate proceedings. See *Pettiford v. Zoellner*, 45 Mich. 358, 8 N. W. 57; *Potter v. Ranlett*, 116 Mich. 454, 74 N. W. 661; *Dunlap v. Byers*, 110 Mich. 109, 67 N. W. 1067; *Petranek v. Minneapolis, St. Paul and S. S. M. R. Company*, 240 Mich. 655, 216 N. W. 467; and *Richardson v. Richardson*, 309 Mich. 336, 15 N. W. 2d 660, certiorari denied 324 U. S. 864, 89 Law Edition 1420, 65 Supreme Court 912.

II.

WAS THE PETITIONER A PROPER PARTY TO PRESENT THE ISSUES DESCRIBED IN HIS COMPLAINT?

The District Court answered "No."
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

As stated in the Opinion and Order of Dismissal by the District Judge in this case (88a and 89a):

> "Concerning the case itself, the court has searched in vain in an attempt to find the 'right' which plaintiff is herein attempting to protect. The mere fact that the attorneys he attacks have not been disbarred does not necessarily deny to the plaintiff the constitutional rights he recites. Plaintiff's position has been that comparable to a complaining witness reciting a past wrong and seeking punishment for the culprit. Plaintiff is not a true party to the action sought since a disbarment is never viewed as an adversary proceeding in a strict sense. It is the court's right, as well as its duty, either directly or in its behalf to purge its officers of an unworthy member. It involves no private interest except that of the attorney. *Re Keenan* (1934) 287 Mass. 577.

> It is quite obvious that the actual damage alleged was the disinheritance suffered by the plaintiff.
>
> This was made abundantly clear in the oral argument. We understand that that case is or has been appealed to the Michigan Supreme Court. However, this private grievance does not give the plaintiff a special place to seek redress in a disbarment proceeding. *Re Keenan, supra.*"

When the petitioner or any other person files a complaint against a member of the State Bar of Michigan, he does so as a witness, rather than a as a party to a proceeding. When a Request for Investigation is filed in proper form, consisting of a *brief statement, in triplicate as to each respondent*, setting forth the details of each alleged act of misconduct (35a), this brings to the attention of the grievance organization of the State Bar of Michigan, acting under Michigan Supreme Court Rules, those alleged circumstances in order that the matter may be reviewed and inquiry made to determine whether or not the Courts of the State of Michigan may wish to impose discipline upon such attorney.

There is no such thing as a vested right on the part of a complainant to have an attorney disciplined with reference to whether or not he should be permitted to continue practicing law in the State of Michigan. Neither is there any vested right on the part of a complainant to have a hearing ensue in any case in which he files assertions with the State Bar of Michigan, regardless of the form in which said assertions are set forth and regardless of whether the complainant has filed sufficient copies of his exhibits or other matters pertaining to orderly proceedings in a review by the grievance organization of a State.

The Constitutional guarantees do not contemplate, nor do constructions thereof indicate, the enforcement of any right

of a complainant to have a hearing preparatory to the discipline of an attorney by the Courts of a State and, particularly, this is apparent when applied to a matter in which the length, form, the furnishing of sufficient copies or other details have been the subject of a dispute between the grievance organization of the State and such complainant.

The petitioner goes to great lengths in his Brief and in the complaint filed with the District Court to point out that a dispute arose between the petitioner and the State Bar of Michigan as to the form in which the petitioner had filed the requests for investigation of the Lansing attorneys. He then claims that he had a right to a hearing, regardless of the existence of such dispute as to the form in which the requests for investigation should be filed. This is the sole ground on which the petitioner attempts to invoke the jurisdiction of a United States Court.

We submit that the petitioner has failed to assert a "right" under the Constitution whereby he is a proper party to present the issues which he asserts in this matter. At most, the petitioner has stated that he is a witness in various matters which he claims should be prosecuted in the grievance organization of the State of Michigan, if and when filed in the form described by the State Court for the orderly presentation of complaints.

We respectfully refer the Court to the excellent treatment of this subject set forth in the opinion of the Court of Appeals for the Sixth Circuit in this case, under Section I of this Argument, sub-division A, appearing on pages 13 through 16, inclusive, of this Brief. The well-reasoned opinion of the Court of Appeals herein establishes that the Petitioner has no "right" secured to him by the Constitution of the United States or its Amendments, applicable to the circumstances of this case.

In the case of *Lathrop v. Donohue*, — U. S. —, 6 L. ed. 2nd 1191 (1961), the capacity of Mr. Lathrop as appellant to present the question of whether or not a right to freedom of association was violated by integration of the State Bar of Wisconsin, was not therein challenged. By contrast, the petitioner in this case has not described a "right" protected by the United States Constitution or its Amendments which could be determined by this Court on application of the Petitioner herein.

III.

DID THE PETITIONER STATE A GROUND FOR RELIEF?

The District Court did not specifically reach this issue in its opinion.
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

A. The petitioner has failed to allege circumstances giving rise to damages as to the respondents in this cause.

The petitioner asserted in his complaint as filed in the District Court that he had filed requests for investigation of four Lansing attorneys who were connected with State Court proceedings concerning the Estate of Jessie E. Saier, deceased, and made reference to State Court litigation arising therefrom, all of which described conduct of the attorneys which *occurred prior* to the filing of his requests for investigation with the State Bar of Michigan. This is indisputable, since the petitioner could not have included in the requests for investigation anything which occurred thereafter, nor could he complain that hearings were not had or that discipline was not imposed by reason of subsequent matters.

It is submitted that whether or not the grievance procedures pertaining to grievances in the State of Michigan resulted in hearings being held or discipline imposed upon the attorneys or any of them, pertain only to the question of whether or not such attorneys *thereafter* shall practice law in the State of Michigan.

A result whereby such attorneys were permitted to continue to practice law in the State of Michigan, after the conduct asserted in the requests for investigation, could not injure the petitioner thereafter, unless the petitioner himself subsequently were to seek to employ those attorneys voluntarily (which appears unlikely) and if some other and future misconduct were to occur. Certainly, any damages to the petitioner by reason of possible subsequent conduct would be far too speculative an issue to submit in the District Court with reference to possible damages.

B. The petitioner's references to damages sustained by the petitioner are too inadequate and uncertain to permit speculation as to damages in this proceeding.

In the complaint filed by the petitioner in the District Court, the petitioner asserted that he believed himself to have been damaged because the Lansing attorneys had not been disciplined in the State of Michigan. In his brief under "argument", the petitioner now states that he did not intend to claim that he had a right to have the attorneys disbarred, but only a right to have his complaints processed as other complaints are processed under Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan (petitioner's Brief, page 20).

Accordingly, the petitioner's request for damages in this matter would involve a determination in the District Court that if the petitioner had filed his requests for investigation and his exhibits in proper form and with the proper number of copies of each for an adequate consideration of the matter, and if hearings thereon had been had before a grievance committee, the grievance committee would have made specific findings of fact founded upon the petitioner's assertions rather than the attorneys' defenses thereto, that the grievance committee would have recommended discipline beyond reprimand and consisting of either suspension or disbarment of the attorneys and that this suspension or disbarment would have avoided some financial loss to the petitioner which he has sustained because this was not accomplished. Any such series of determinations requested of the District Court would be far too speculative and uncertain to form the basis upon which to award damages to the petitioner.

We emphasize that the petitioner has not asserted in his requests for investigation, in his complaint filed with the District Court or in his Appendix or Brief filed in this Court, that he has at any time instituted proceedings in the State Courts either for injunction or for damages against any of the attorneys described in his requests for investigation, nor can he make any such assertion. In effect, the petitioner is requesting that the Federal Courts impose damages upon the State Court members and members of the State Bar grievance organization on the theory, that, as a result of the petitioner's assertions there might have been a determination by a Grievance Committee and by the State Courts that the attorneys should have been suspended or disbarred and that the petitioner, thereafter, might have avoided damages which he might subse-

quently suffer by reason of the attorneys being permitted to continue to practice as officers of the Courts of the State.

C. The petitioner has failed to allege circumstances setting forth inequality in the processing of the petitioner's requests for investigation as compared to other requests for investigation filed with the State Bar of Michigan.

The petitioner, in his Brief, states that his only claim of right is with reference to having his complaints processed by the State Bar in the same manner as other complaints were processed under the provisions of Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan (petitioner's argument, 20).

The petitioner not only admits, but affirmatively asserts at several places in his complaint filed with the District Court and his Brief, that a dispute existed between the petitioner and representatives of the State Bar of Michigan as to the form and sufficiency of the requests for investigation filed by the petitioner, and particularly whether he had filed his requests for investigation setting forth *briefly specific charges* of misconduct, with sufficient copies of his exhibits.

Nowhere in the complaint filed in the District Court nor in the Brief does the petitioner make reference to the form or content of any other requests for investigation processed under Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan. The petitioner implies that his requests for investigation were treated differently from other requests for investigation filed in the same or similar form but does not assert any basis for comparison. The

petitioner asks the Court to conclude that the petitioner has been denied equal protection of the laws on the basis that his requests for investigation were treated differently from other requests by other persons, but the petitioner has provided the Court nothing but a conclusion.

D. The petitioner has not demonstrated that he has been denied a hearing.

The petitioner states at several places in the complaint filed in the District Court (such as 27a to 31a inclusive) that a dispute existed between the petitioner and representatives of the State Bar of Michigan as to the adequacy of the form in which the petitioner set forth his assertions in his requests for investigation of the three or four Lansing attorneys, indicating that he filed one set of requests for investigation against the four attorneys and subsequently revised the same and re-filed the requests for investigation, with a dispute still existing as to the sufficiency thereof and particularly as to whether the same complied with Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan.

The petitioner does not assert, nor can he assert, that he made any further attempt to comply with procedural requirements of the State Court for the orderly presentation of complaints. Instead, apparently, the petitioner thereupon decided that two attempts to set these matters forth were enough, filed a series of two petitions for Writs of Mandamus with the Supreme Court of the State of Michigan, each of which were denied, and even then did not attempt further revision in order to comply with said rule but thereupon waited an additional two (2) years after the denial of the second petition for Writ of Mandamus, decided his constitutional rights had been violated and filed a complaint in the District Court.

We submit that the petitioner has not demonstrated that he has been denied a hearing. At most, he has demonstrated that a dispute existed as to the form in which he had filed his requests for investigation and whether or not the same complied with the rule requisite to the orderly processing of complaints.

The most that the petitioner can or does assert is that a dispute existed as to form of his complaint and that it was suggested to him that it be amended, even as to the second set filed by the petitioner.

As to these sets of requests for investigation filed by the petitioner, in 1956, he still has failed to amend his requests for investigation in order that they consist of *brief statements* setting forth *specific charges* of misconduct, or filing an adequate number of copies of his exhibits to which reference was made in the requests for investigation (68a) for service of the same upon the respondent attorneys.

To this date, the petitioner, has not been denied a hearing. He has decided to construe the suggestion that he amend the form of his requests for investigation as denials. Further, he is asking the Federal Courts to interject themselves into the processing of requests for investigation, even to the point of construing whether or not a suggestion that certain papers be amended, and the form thereof, as a denial of a hearing and, even further, a denial of constitutionally-guaranteed rights. We submit that the procedures adopted by the petitioner indicate a greater interest in becoming a party in Federal Court litigation than in obtaining the imposition of discipline by the State Courts as to its officers.

As stated in the opinion of the Court of Appeals for the Sixth Circuit in this case (pages 32 and 33 of the Appendix contained with the Petition herein):

> "The appellant has alleged in his complaint that he twice petitioned the Supreme Court of Michigan for a writ of mandamus to require the State Bar officers to process his request for investigation and that his petitions were twice denied. This was a proper forum and if there were constitutional questions involved he could have petitioned the Supreme Court of the United States for certiorari. The District Court cannot review the proceedings of the Supreme Court of Michigan. Having pursued a remedy in a proper forum and in a court with jurisdiction to hear his cause, we are of the opinion that a denial of relief by that court terminated the appellant's litigation to require further action by the State Bar.
>
> "After this denial, he should have given consideration to the request of the State Bar Officers. It is alleged in the complaint that on October 3, 1956, he was requested to furnish new forms which he refused to do. There is nothing in the complaint to show that this request was arbitrary or capricious and, in refusing to comply, the appellant cannot say that the bar refused to process his complaint but, rather, he puts himself in default by his own allegations."

E. The petitioner presented conflicting statements and admonitions whereby the petitioner made it impossible to process his requests for investigation of the attorneys.

The requests for investigation as filed by the petitioner, requesting that four separate files be established as to four separate attorneys, made reference to a single file of

exhibits and photostatic copies of about fifty-six (56) pages (68a) which were incorporated in each of said four requests for investigation by reference and said requests for investigation included an admonition that neither the requests for investigation, nor those papers incorporated therein, were to be filed either with the Ingham County Probate Court "or any other Court * * *" (71a).

The Court's attention is directed to Section 13 of Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan, the second sentence of which is as follows:

> "If the certified report of a grievance committee recommends discipline by the court, it shall be the duty of the chairman to file the report either in the circuit court for the county in which the misconduct occurred, or in the circuit court for the county in which the respondent has either his office or residence."

As appears to be the case in most other states, the imposition of discipline by way of suspension or disbarment can be done only by the Courts of a State, the grievance committees serving the purpose of hearing evidence, making finding of fact and submitting to the Courts a recommendation as to the degree of discipline which should be imposed as to an attorney. Petitioner concurs in this (38a, lines 14-19).

In this instance, the petitioner admonished the State Bar of Michigan that it was not to file the materials in the requests for investigation or any of the exhibits or photostatic copies incorporated therein in any Court. The petitioner added the words "directly or indirectly" by any person attempting to have the petitioner disinherited in the Will, although the construction of the admonition not to file any of the materials in any Court could not be as-

sumed by the State Bar of Michigan, particularly when followed by the words "directly or indirectly". Accordingly, even had the requests for investigation proceeded to hearings and even had the grievance committee recommended suspension or disbarment of the attorneys, if the State Bar at that stage had complied with the admonition made by the petitioner at the outset that the papers were no to be filed in any Court, the grievance committee could not have filed a certified report with a Circuit Court of the State in order that such Court could impose any discipline recommended.

In short, petitioner admonished the State Bar at the time he first filed the requests for investigation that the matters therein set forth together with the petitioner's exhibits and photostatic copies, could not be filed with a Court. The imposition of discipline against the attorneys involved could only be had by Court action. The petitioner attempted to establish his own rules as to the manner in which the grievances would be processed, at what stage they must stop, and what matters could or could not be filed in Court by the State Bar.

IV.

WERE THE MEMBERS OF THE SUPREME COURT OF THE STATE OF MICHIGAN, OR THE DISTRICT JUDGE OR MEMBERS OF THE COURT OF APPEALS DISQUALIFIED?

The District Court answered this question "No" as to members of the Supreme Court of Michigan.
The Court of Appeals answered this question "No" as to the members of the Supreme Court of Michigan.
Neither the District Court nor the Court of Appeals reached this alleged issue as to the District Judge.
The Court of Appeals did not reach this alleged issue as to the members of the Court of Appeals.
Respondents contend the answer should be "No."

With reference to the Petitioner's charge that the members of the Supreme Court of Michigan were disqualified from sitting in the mandamus actions or that they were guilty of a conspiracy, we refer to the excellent discussion of this subject contained in the opinion of the Court of Appeals for the Sixth Circuit in this case (on pages 33 and 34 of the Appendix appended to the Petition herein):

> "The appellant charges in his complaint that the members of the Supreme Court of Michigan were disqualified from sitting in the mandamus actions for the sole reason that they themselves were members of the Michigan State Bar. The situation is not open to any such arbitrary presumption. Lawyers are officers of the court and the courts have a duty to supervise their conduct. As Mr. Chief Justice Marshall said, in ex parte Burr, supra, 'The power is * * * incidental to all courts, and is necessary for the preservation of decorum, and for the respectability of the profession."
>
> "The judges are as much interested as any third person could be in the decorum and respectability

of the lawyers who practice before them. It is inconceivable that the judges of the Supreme Court would so far transgress the dignity and responsibilities of their high office to protect lawyers in such misconduct, as is inferred here, at the expense of the reputation of its bar.

"There is no charge in the complaint that the judges, in denying the petitions for mandamus, acting arbitrarily, capriciously, or maliciously. We must assume then that they acted in good faith in their judicial capacity. Judges are immune from suit arising out of their judicial acts and the civil rights statutes create no exception to this rule. *Bradley v. Fisher*, 80 U. S. 335; 13 Wall. 335; *Kenney v. Fox*, 232 F. 2d 288, C. A. 6; *Allen v. Groat*, 283 F. 2d 692, C. A. 6.

"The appellant in his complaint alleges that the Michigan Supreme Court and the Michigan State Bar conspired together and with others unknown to him to deny him the rights of which he complains. The allegations in the complaint are that the appellant filed actions for mandamus in the Supreme Court and that they were denied. None of the elements of conspiracy are pleaded. There is only the conclusion of the pleader.

"The accepted definition of a conspiracy is, a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means." *Duplex Co. v. Deering*, 254 U. S. 443, 465."

With reference to the petitioner's assertions and conclusions that the District Judge and a member of the Court of Appeals were disqualified by reason of membership in the State Bar of Michigan, together with a further asser-

tion that another member of the Court of Appeals was disqualified by reason of prejudice, we point out to the Court

(a) We know of no rule requiring that either the District Judge or that members of the Court of Appeals be required to continue membership in a state bar association after their appointment to office as such. In the event either the District Judge or a member of the Court of Appeals were to resign from a state bar association, it does not appear that this would be cause for removal of such a judge from office. Accordingly, any membership by either the District Judge or a member of the Court of Appeals in the State Bar of Michigan or in any other state bar association would be on a voluntary, non-compulsory basis. There would be no compulsion whatsoever on the part of either a District Judge or a member of the Court of Appeals to determine a case in a particular way by reason of the matter affecting a state bar association of which that Judge is not required to be a member in order to continue in office.

In addition, the petitioner waived any right to challenge the qualification of the District Judge. There was no motion or affidavit of prejudice filed in the District Court challenging the District Judge's qualification to sit as the District Judge in this cause (1a).

(b) The unsupported assertions and unwarranted conclusions of the petitioner in his references to the District Judge, individually, and as to two members of the Court of Appeals for the Sixth Circuit, individually, are demonstrative of the unsupported and unwarranted nature of the assertions and conclusions of the petitioner in his descriptions of the conduct of various of the respondents herein, in his pleadings and in his brief.

SUMMARY OF ARGUMENT

The petitioner has failed to state a cause of action cognizable by the United States District Court, since discipline and the proceedings pertaining thereto with reference to an attorney's membership in the bar of a state are exclusively within the jurisdiction of the Courts of that state.

The constiutionality of integration of the State Bar of Michigan is not determinable in this proceeding since it is not properly before the Court in this case. The petitioner has failed to set forth any justiciable issue other than such constitutionality, which cannot be reviewed as a sole issue herein. Even if this issue were before the Court, the determination thereof should be in favor of such constitutionality under the provisions of prior applicable cases and particularly under the provisions of a recent opinion in this Court itself.

The rules pertaining to the State Bar of Michigan as established by the Supreme Court of Michigan previously have been held by this Court to comply with "due process" requirements, in the petition for a Writ of Certiorari in a prior matter. These rules do comply with "due process" requirements.

The Federal Courts should refrain from complying with the request of the petitioner that the Federal Courts supervise disciplinary proceedings estaiblished by State Courts pertaining to their own officers, both by reason of there being no jurisdiction for such supervision and also by reason of the intolerable burden which any such supervision would place upon the Federal Courts.

The petitioner's assertions with reference to the circumstances giving rise to his alleged complaints constitute attempted collateral attacks on various proceedings in the lower Courts of the State of Michigan, such as challenging the validity of testimony presented at admission of a Will to probate, to which admission the petitioner specifically did not object. Such a collateral attack could not have been entertained either by the grievance organization of the State Bar of Michigan, or by the Supreme Court of the State of Michigan at the hearings on the petitions for mandamus, or by the District Court.

The petitioner is not a proper party to present the issues described in his complaint since he has failed to describe any "right" secured to him either by the Constitution of the United States or its Amendments. The petitioner was in the capacity of a complaining witness when he filed complaints against members of the State Bar of Michigan and not a party to a proceeding. He had no right to a hearing, regardless of the form in which the complaints were filed, secured to him in that capacity by the Amendments to the Constitution of the United States.

The petitioner failed to state a ground for relief for several reasons. He failed to allege circumstances giving rise to damages, although he prayed for damages in his complaint as filed with the District Court. Any references by the petitioner to damages as contained in the complaint would be too speculative to permit any award of damages thereon.

The petitioner has not described circumstances establishing that he was denied a hearing on his complaints filed with the State Bar of Michigan. He alleged that a dispute existed between the petitioner and the State Bar as to whether his complaints were in a sufficient form, and

whether he had furnished sufficient copies of the exhibits, for service upon the respondent attorneys in a form adequately to inform them as to the nature and details of the charges which the petitioner wished to make against them. Indeed, it might well be that attempted processing of these files by the State Bar would not have complied with the rights of the attorneys to be served with papers adequately informing them as to the details and nature of the charges being made against them.

The form in which the petitioner filed his complaints with the State Bar of Michigan contained conflicting admonitions by the petitioner, in such manner that the State Bar would not clearly have been at liberty to file disciplinary proceedings in Court, after any Grievance Committee hearing. The petitioner attempted in his complaints to establish the rules under which his complaints would be heard, rather than by following the rules applicable to members of the State Bar of Michigan as established by the Supreme Court of Michigan.

Throughout his briefs and pleadings, the petitioner makes reference to having been deprived of his "day in Court". The petitioner repeatedly alleges that certain attorneys in Lansing, Michigan, committed misconduct or malpractice. None of the respondents herein is alleged by the petitioner to have interfered in any manner whatsoever with whatever civil action the petitioner might have had against any one of those attorneys by reason of such alleged malpractice. Indeed, the petitioner has not alleged that he ever commenced any proceeding against any of the Lansing attorneys founded upon the alleged malpractice by those attorneys. The petitioner is attempting to accomplish indirectly what he cannot do directly. He has refrained from seeking damages from the attorneys whom

he claims committed wrongs against him and, in the District Court complaint, he seeks damages against the organization of which those attorneys were members.

Even then, the petitioner does not seek damages from these respondents on any allegation of having interfered with his cause of action, if any, against those attorneys for the alleged malpractice described by him, but by reason of a lack of proceedings by way of discipline to those attorneys, who are not even respondents in this proceeding. Indeed, the petitioner has not been deprived of his "day in Court" as to any malpractice committed against him by any attorney.

CONCLUSION

These respondents respectfully pray that the petitioner be denied issuance of a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

J. CAMERON HALL,
General Counsel,
State Bar of Michigan,
Attorney for Respondents State Bar of Michigan, Bachmann, Cox, Planck and Searl,
1323 Dime Building,
Detroit 26, Michigan.

Dated: November 15, 1961.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 525

HERBERT E. SAIER, Petitioner

vs.

STATE BAR OF MICHIGAN, THE SUPREME COURT OF THE STATE OF MICHIGAN, ET AL., Respondents

---

PETITIONER'S REPLY TO BRIEF OF STATE BAR OF MICHIGAN, ET AL

HERBERT E. SAIER,
Petitioner, In Per Se
Business Address:
% General Delivery,
Lansing, Michigan

AMERICAN PRINTING AND RECORD COMPANY, FIFTY MARKET AVENUE, N.W.
GRAND RAPIDS 2, MICHIGAN — PHONE GL 6-3632

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 525

HERBERT E. SAIER, Petitioner

vs.

STATE BAR OF MICHIGAN, THE SUPREME COURT OF THE STATE OF MICHIGAN, ET AL., Respondents

---

PETITIONER'S REPLY TO BRIEF OF STATE BAR OF MICHIGAN, ET AL

Respondents' brief contains flagrant distortions of evidence. A few illustrations will demonstrate how serious they are.

STATEMENT OF MATERIAL FACTS

On page 3 of the State Bar Brief, Counsel hedged quite cleverly about the fact that the September 10, 1956 complaint was not returned to this Petitioner on October 8th, 1956, but he does not deny the truth of the letters of the Clerk of the Michigan Supreme Court stating that same was in the State Bar File after October 8th, 1956 (Certified Record from Court of Appeals), dated November 10, 1960, and (R-84a); nor did counsel deny the fact (center page 13 Petition) that he had personally admitted that the September 10th, 1956, complaint was in the State Bar File in his office after October 8th, 1956; nor did said counsel deny that he was the Grievance Administrator for the

State Bar of Michigan and was personally responsible for the proper processing of complaints filed for disciplinary action under Rule 15 of the Supreme Court Rules Concerning the State Bar of Michigan — nor does he offer to explain his failure to perform his duty in the premises (R-60a). That all complaints are in his custody and care, therefore having personal knowledge of facts.

On pages 3 and 4 of the State Bar Brief, counsel deliberately and knowingly misstated the facts as to copies for accused attorneys, because he well knows that this Petitioner filed with each of the four separate complaints filed with the State Bar against the several attorneys, in addition to a copy of the complaint, a complete set of photostatic copies of the exhibits pertaining to each attorney claimed misconduct (Page 24, Petition) and Also letter from Don Winters, Clerk of Supreme Court of Michigan in Certified Record — dated November 21, 1958 saying "• • • contains besides letters and copies of letters, three sets of photostats, two of which are of considerable size and one about half size of the first two." One of complained about attorneys (Oscar J. Hood is deceased and he was in only about half the charges, so smaller set) Also see letter of Clerk of the Supreme Court of Michigan, dated January 28, 1959, and here all records that are missing from the Clerk of Supreme Court's File, showing the four complaints are not missing, but, enormous amount of the Supreme Court File was taken — but — nowhere does the Supreme Court or the State Bar do anything about it. Only the accused attorneys had the record out of the Clerk's office.

The comments as to the Will on pages 4 and 5 are to a large degree false, but the Will was duly admitted to probate and the question is not relevant in this appeal; the remarks have no proper place in either the statement of facts or the argument herein.

On page 5, center paragraph, in the Statement of Facts, in the State Bar Brief, counsel again displayed his willingness to deliberately misstate the facts. He refers to a second revision of the complaint and gives the impression that there was only such second revision and nothing further. The records show four different sets of complaints; there was the original on October 10, 1955; the first re-

vision on July 16, 1956: the second revision on July 28, 1956, and the third revision on September 10, 1956: (Page 10 Petition). These revisions were, to the knowledge of counsel, made in the State Bar Office on each occasion and were approved by the officer on duty in the State Bar Office. So counsel conveys a false impression of a running dispute as to the form of the complaints filed. It was admitted by Secretary Bachmann in September of 1956 that he was not even going to process the complaints (R-65a). No denial.

ARGUMENT

I.

Concerning Federal Court Jurisdiction.

Counsel for State Bar and its officers attempt to direct the Court to an issue of Federal Court review of a State Court or of a State Court's rules concerning the discipline of officers of said State Court for misconduct. This Petitioner seeks no review of this type and there is no basis for counsel to so contend (R-58a — lines 14-15).

This action is for conspiring to deprive and for actual deprivation of rights guaranteed by the Constitution and for determination as to the constitutionality of *Michigan Public Act* No. 58 of 1935 and as to the constitutionality of certain rules concerning the State Bar.

The deprivation results from the failure and refusal of the State Bar and its officers to follow their own rules in processing complaints filed by this Petitioner and the failure and refusal of the State Supreme Court to require that such rules be followed. This Petitioner, also, contends that the State Bar and the State Supreme Court conspired together and with others to deprive Petitioner of his rights in the premises.

Title 28 *U. S. C. A.* 1343 (3) expressly gives the Federal District Court jurisdiction over such deprivation of rights cases.

The constitutionality of the State Bar Act and of certain Rules Concerning the State Bar, where same may be involved in the Civil Rights Statute, are determinable in that phase of the case and otherwise are determinable by

virtue of the issues having been raised in a damage suit grounded, jurisdictionally, upon diversity of citizenship.

The arbitrary denial of a writ requiring the State Bar to follow the rules was an actionable deprivation of rights cognizable by the Federal Court.

However, the important fact is that arbitrary deprivations of constitutional rights, under the guise of law, actually took place in the case at bar.

Certainly the states have jurisdiction over their attorneys and judges, over their bar associations — but this does not permit arbitrary action on the part of officials contrary to the Constitution. *Konigsberg vs. State Bar of Cal.*, 353 U. S. 252; *Schware vs. Board of Bar Examiners*, 353 U. S. 232.

B. *As to constitutionality of State Bar and Rules being determinable in this proceeding.*

The validity of the State Bar Act and the Rules Concerning the State Bar are directly tied into the issue of deprivation of rights guaranteed by the Constitution and, therefore, must of necessity be determinable in this action involving such deprivation of rights and involving conspiracy to deprive of such rights.

The Civil Rights Statute provides that actionable deprivation of constitutional rights must be under color of law. The respondents herein, while pretending to act upon legal authority, did, under the guise of law, resort to the arbitrary deprivation of rights and to the conspiracy to deprive of rights. Therefore, the provisions of the law; the validity, the constitutionality of the laws involved; the validity and legality of the actions taken under color of state law — are all pertinent to the issues here involved and must, as a matter of legal necessity, be determinable in this proceeding.

If the State Bar Act is unconstitutional, if the Rules thereof are unconstitutional, if the sitting of the State Supreme Court was unconstitutional — anything in the circumstances involved which might be found unconstitutional would have a direct bearing on this case, so this Court must have the right and the jurisdiction to determine such issues.

The denial of certiorari by the Court in Re: *Petition of Walter O. Estes* was not a ruling on the merits, so can be given no authoritative effect here.

C. ***As to the proceeding being an attempted collateral attack on proceedings in the State Courts.***

The contentions of counsel for the State Bar are absurd and unreasonable on this point.

The will mentioned has long since been admitted to probate, with the approval of this Petitioner made a matter of record. Therefore, all discussion of said will is to be disregarded in this proceeding; it is not involved. The statements made about the said will are actually false, but being immaterial, the matter need not be pursued further. Petitioner was subpoenaed, but was not allowed to testify. See *Saier, In re*, 342 Mich. 587 at page 593.

The other matters mentioned have been covered elsewhere and need not be repeated.

Suffice it to say that the action brought by Petitioner in the Detroit Court was a separate action for damages and not an attempt to review any State Court proceeding (R-58a — lines 14-15).

II.

As to Petitioner being a proper party to present the issues described in his complaint.

The issues could be raised by any party who was similarly deprived of his rights or against whom there was a conspiracy to deprive of rights.

The Petitioner is the only person who could be the party plaintiff in the instant case. It was the Petitioner's complaints that were arbitrarily brushed aside and denied access to the usual channels of processing provided for complaints under Rule 15 of the Rules Concerning the State Bar. It was the Petitioner who was arbitrarily denied a writ of mandamus by the State Supreme Court when, according to law, such writ should have issued to compel the State Bar to follow its own rules.

The Petitioner is certainly the proper party to present the issues, because it was the Petitioner against whom the conspiracy to deprive was directed and it was the Petitioner who was actually deprived of his constitutional rights.

The argument of the State Bar is clearly stated on page 30 of the State Bar Brief — "* * * Neither is there any vested right on the part of a complainant to have a hearing ensue in any case in which he files assertions with the State Bar of Michigan, regardless of the form in which said assertions are set forth * * *." (Center last paragraph).

In effect, counsel for the State Bar frankly contends that, even though the law, the Rules Concerning the State Bar of Michigan, expressly provides for redress of grievances against members of the State Bar by setting out the manner of filing complaints and the specific steps for processing the same — that in spite of these clearly stated procedures set up to protect the citizens from the attorneys, such stated provisions are meaningless, they are only a window dressing to lull the citizenry into a feeling of security, they are only a ruse to mislead the public into having confidence in the State Bar, they are not at all what they seem. The rules give no right to anyone to do anything, to get anything, to recover anything or to have anything considered, investigated, heard or determined.

Certainly this Court cannot accept this assertion that amounts to an admission that the State Bar of Michigan is a fraud and that the State Supreme Court is ready and willing to join said State Bar in perpetrating one great fraud on the people of the State of Michigan, — cannot accept it with approval and permit such a fraud to continue. Petitioner has contended all along that in the administration of the State Bar of Michigan it has actually been a great fraud, a hoax, fooling the public instead of serving the public. However, the meaning of counsel's statement of the State Bar's position is clear: he says that no matter what form is used, no matter how many copies are furnished, no matter how serious the complaint, no complainant has a right to have his complaint heard.

This Petitioner contends that the Rules were written for a purpose, and that purpose was to protect the public. If such protection is to be accomplished, the provisions for filing complaints must give a vested right to the complainant to have that complaint processed to some determination. Certainly the complainant cannot control the determination itself, this must depend upon the facts, but the complainant does have a vested right to have his complaint processed.

The arbitrary whims of the officers of the State Bar should not be able to sidetrack any complaint and deprive the complainant of having it processed. In the regular course of processing a complaint, it may be dismissed after investigation, it may be dismissed after a confirmed accounting by the accused attorneys that the assertions in the complaint are unfounded — but it must be processed and disposed of in some manner meeting the requirements of due process.

Such was not done in the case at bar. The arbitrary position stated by counsel for the State Bar explains very simply why this Petitioner was not recognized by the State Bar. According to the position of the State Bar, no citizen has any rights, they are only made to believe they have rights. Supreme Court of Michigan supports this great fraud in Michigan.

On page 32 of counsel's Brief gives the *Lathrop vs. Donohue* case, but this is not applicable here — issues are different; the statute is different; the circumstances are different. Petitioner is not an attorney, but an ordinary citizen.

III. A. As to grounds for relief.

Counsel for the State Bar again resorts to his well practiced art of evading and avoiding the real issue; the arguments submitted in the State Bar Brief are absurd and in no way related to the question.

The grounds for relief, as repeatedly stated, are all wrapped around the failure and refusal of the State Bar to process the complaints of the Petitioner; the deprivation of his right to have his petitions for redress con-

sidered in a manner that would satisfy due process; the deprivation of rights guaranteed by the Constitution.

Whether the attorneys are disciplined or not, whether the Petitioner loses or receives his share of his mother's estate are moot questions here. The question is whether or not the Petitioner was deprived of his constitutional rights or was the victim of a conspiracy to deprive him of such rights.

B. *As to damages.*

In the complaint filed by this Petitioner in the District Court, Par. 150 (R-31a), the claim of damages is clearly set forth. The issue of damages was not raised or argued in either the District Court or in the Court of Appeals, so it is not properly raised here. However, Counsel for State Bar again tries to distort the facts, confuse the issues and pull a herring across the trail by discussing irrelevant matters.

C. *As to equal application of the law.*

This point has been covered repeatedly and need not be set forth again. Suffice it to say that the arguments submitted in behalf of the State Bar are again obvious distortions of the facts and wilful wanderings from the truth.

D. *As to denial of hearing.*

This point has also been covered in other arguments.

E. *As to conflicting statements.*

Petitioner admits that there were obvious conflicts in regard to his complaints, but states the truth to be that all such conflicts and contradictions were on the part of the State Bar and its officials and attorneys and not on the part of the Petitioner.

Even the argument of counsel are false and contrary to the facts well known to him — all of which is fully set forth in other portions of the Appendix, Petition and Brief.

IV. As to judicial disqualification.

(a) Petitioner refers again to Rule 3 of the Supreme Court Rules Concerning the State Bar of Michigan, which requires judges to register as active members and subjects them to suspension for failure so to do.

The Integrated Bar knows no such thing as a voluntary member — the very purpose is to establish compulsory membership.

These arguments are otherwise answered in the Petition. The question of compulsory memberships of judges has never before been raised and should be determined.

(b) Petitioner's position of claiming disqualification of judges is not unsupported or unwarranted as falsely stated by counsel for the State Bar, counsel for the State Bar adroitly neglects to deny the claims of the Petitioner and again hedges on the facts, distorts the issues and attempts to invoke a prejudice against the Petitioner by stating unsupported opinions of his own without legal or judicial authority.

Federal Judges and Justices should not be compulsory members of the Labor Union of the State Bar of Michigan, as only the President and the United States Senate have that authority. This should be decided by this Court in the matter. Respondent Michigan Supreme Court has not served Petitioner with their reply to date.

CONCLUSION

Petitioner still contends that Certiorari should be granted.

Respectfully submitted,

HERBERT E. SAIER,
Petitioner, In Per Se.
Business Address:
% General Delivery,
Lansing, Michigan.

Dated: November 27, 1961.

Office-Supreme Court, U.S.
FILED
JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 525

HERBERT E. SAIER,

Petitioner,

vs.

STATE BAR OF MICHIGAN, An Association claimed to be a state agency, and MILTON E. BACHMANN, as Executive Secretary of the State Bar of Michigan and Individually, JOSEPH C. COX, as former Executive Assistant of the State Bar of Michigan, and Individually, and JOSEPH H. PLANCK, as Executive Assistant of the State Bar of Michigan and Individually, and RUSSELL A. SEARL, as attorney for the State Bar of Michigan and individually, and

THE MICHIGAN COURT OF THE STATE OF MICHIGAN and JOHN R. DETHMERS, as Justice of said Supreme Court and in his Individual capacity, and LELAND W. CARR, as Justice of said Supreme Court and in his Individual capacity, and HARRY F. KELLY, as Justice of said Supreme Court and in his Individual capacity, and TALBOT SMITH, as Justice of said Supreme Court and in his Individual capacity, and EUGENE F. BLACK, as Justice of said Supreme Court and in his Individual capacity, and GEORGE EDWARDS, as Justice of said Supreme Court and in his Individual capacity, and JOHN D. VOELKER, as ex-Justice of said Supreme Court and in his Individual capacity, and EDWARD M. SHARPE, as ex-Justice of said Supreme Court and in his Individual capacity,

Respondents.

BRIEF ON BEHALF OF RESPONDENTS SUPREME COURT OF MICHIGAN, COLLECTIVELY AND INDIVIDUALLY IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

PAUL L. ADAMS
Attorney General of Michigan

Joseph B. Bilitzke
Solicitor General of Michigan

Attorneys for Respondents
Supreme Court of Michigan

The Capitol
Lansing, Michigan

SPEAKER HINES AND THOMAS, INC., LANSING, MICH., 1961

TABLE OF CONTENTS

		Page
	Counter-Statement of Question Involved	iii
I	Counter-Statement of Facts	1
II	Argument	2
III	Conclusion	5

INDEX TO CASES CITED

Adair v. Bank of America Association, 303 US 358	2
Bradley v. Fisher, 80 US 335; 14 Wall. 335	2, 3
Barr v. Matteo, 360 US 569	2
Manning v. Ketcham, 58 F2d 948	3, 4
McShane v. Molodovan, 172 F2d 1016	3, 4
Spalding v. Vilas, 161 US 493	2

COUNTER-STATEMENT OF QUESTION INVOLVED

Are the members of the Supreme Court of Michigan, defendants herein, immune from civil liability for acts done in the course of their official duties as judicial officers?

The District Court answered this question "Yes."

The Circuit Court of Appeals, Sixth Circuit, answered this question "Yes."

Appellee answers this question "No."

Respondents answer this question "Yes."

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 525

HERBERT E. SAIER,

Petitioner,

vs.

STATE BAR OF MICHIGAN, An Association claimed to be a state agency, and MILTON E. BACHMANN, as Executive Secretary of the State Bar of Michigan and Individually, JOSEPH C. COX, as former Executive Assistant of the State Bar of Michigan, and Individually, and JOSEPH H. PLANCK, as Executive Assistant of the State Bar of Michigan and Individually, and RUSSELL A. SEARL, as attorney for the State Bar of Michigan and individually, and

THE MICHIGAN COURT OF THE STATE OF MICHIGAN and JOHN R. DETHMERS, as Justice of said Supreme Court and in his Individual capacity, and LELAND W. CARR, as Justice of said Supreme Court and in his Individual capacity, and HARRY F. KELLY, as Justice of said Supreme Court and in his Individual capacity, and TALBOT SMITH, as Justice of said Supreme Court and in his Individual capacity, and EUGENE F. BLACK, as Justice of said Supreme Court and in his Individual capacity, and GEORGE EDWARDS, as Justice of said Supreme Court and in his Individual capacity, and JOHN D. VOELKER, as ex-Justice of said Supreme Court and in his Individual capacity, and EDWARD M. SHARPE, as ex-Justice of said Supreme Court and in his Individual capacity,

Respondents.

I

COUNTER-STATEMENT OF FACTS

Respondents, the Supreme Court of Michigan, hereby adopts the counter-statement of material facts as set out by respondents, State Bar of Michigan, in their brief (pp 2-8).

Respondents further refer the Court to the statement of facts contained in the opinion of the United States Court of Appeals for the Sixth Circuit (App A—petitioner's petition pp 28-29).

II

ARGUMENT

Are the members of the Supreme Court of Michigan, defendants herein, immune from civil liability for acts done in the course of their official duties as judicial officers?

The District Court answered this question "Yes."

The Circuit Court of Appeals, Sixth Circuit, answered this question "Yes."

Appellee answers this question "No."

Respondents answer this question "Yes."

A. The rule of judicial immunity set out in Bradley v. Fisher is applicable to the actions of the Supreme Court of Michigan.

The rule as to judicial immunity was clearly set out by this Court in 1871 in the case of *Bradley v. Fisher*, 80 US 335; 14 Wall. 335, as follows:

> "• • • judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly."

This rule has been followed repeatedly, and without deviation, by this Court since that time. See *Spalding v. Vilas*, 161 US 493; *Adair v. Bank of America Association*, 303 US 358; and *Barr v. Matteo*, 360 US 569.

The Circuit Court of Appeals for the Sixth Circuit followed it implicitly in its opinion in this case: (p 33 petitioner's brief)

> "• • • Judges are immune from suit arising out of their judicial acts and the civil rights statutes create no exception in this rule. *Bradley v. Fisher*, 80 U.S. 335; 13 Wall. 335; *Kenney v. Fox*, 232 F. 2d 288, C. A. 6; *Allen v. Groat*, 283 F. 2d 692, C. A."

Therefore, even though petitioner's actions are brought under the civil rights statute, this in no way minimizes the applicability of the rule of judicial immunity in respect to the Supreme Court of the State of Michigan.

B. The exception to the rule of judicial immunity is not applicable.

Petitioner cites the cases of *Manning v. Ketcham*, 58 F2d 948, and *McShane v. Moldovan*, 172 F2d 1016, as authority for the proposition that a judge is without judicial immunity when he acts without jurisdiction. This Court, in *Bradley v. Fisher, supra*, clearly distinguished the situation where an excess of jurisdiction existed as opposed to an absence of jurisdiction, as follows:

> "• • • A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he

holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend."

In the *Manning Case*, the Circuit Court of Appeals, Sixth Circuit, recognized this distinction in affirming a lower court's decision that a judge was acting without his jurisdiction.

In the *McShane Case*, the Court merely found that a cause of action over which the District Court had jurisdiction existed and remanded the matter for trial.

The jurisdiction of the Supreme Court of Michigan to hear petitioner's action for a writ of mandamus is clear, there being no other State appellate court to which such a petition could be made. No question has ever been raised by petitioner as to the Supreme Court of Michigan's lack of jurisdiction to grant the requested writ of mandamus, had it so desired. The opinion of the court below (p 32 petitioner's brief) covers this matter very succinctly:

"The appellant has alleged in his complaint that he twice petitioned the Supreme Court of Michigan for a writ of mandamus to require the State Bar officers to process his request for investigation and that his petitions were twice denied. This was a proper forum and if there were constitutional questions involved he could have petitioned the Supreme Court of the United States for certiorari. The District Court cannot review the proceedings of the Supreme Court of Michigan. Having pursued a remedy in a proper forum and in a court with jurisdiction to hear his cause, we are of the

opinion that a denial of relief by that court terminated the appellant's litigation to require further action by the State Bar."

III

CONCLUSION

The respondents respectfully pray that a writ of certiorari to the United States Court of Appeals for the Sixth Circuit be denied to the petitioner.

Respectfully submitted,

PAUL L. ADAMS
Attorney General of Michigan

Joseph B. Bilitzke
Solicitor General of Michigan

Attorneys for Respondents
Supreme Court of Michigan

The Capitol
Lansing, Michigan